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No. 2830

United States
Circuit Court of Appeals
For the Ninth Circuit.

Apostles on Appeal.
(IN TWO VOLUMES.)

THE AMERICAN SCHOONER "HALCYON," Her Tackle, Apparel, Machinery, Boats, Furniture, Appurtenances, Cargo, and Freight Money, and J. A. T. OLSON, Master and Claimant,

Appellants,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, a Hawaiian Corporation, Owner of the Steamer "NIIHAU," for Itself, the Officers and Crew of Said Steamer and Other Servants of Said Owner,

Appellee.

VOLUME I.
(Pages 1 to 224, Inclusive.)

Upon Appeal from the United States District Court
for the Territory of Hawaii.

Filed

SEP 21 1916

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VOLUME I.
(Pages 1 to 224, Inclusive.)

**Upon Appeal from the United States District Court
for the Territory of Hawaii.**

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Names and Addresses of Attorneys.

For Libelants: Inter-Island Steam Navigation Company, Limited:

SMITH, WARREN & SUTTON, Rooms #206-
210 Bank of Hawaii Building, Honolulu,
Hawaii.

For Libelee: The American Schooner "Halcyon,"
Her Tackle, etc.:

J. W. RUSSELL, Hilo, Island of Hawaii, Terri-
tory of Hawaii. [1*]

*In the District Court of the United States in and
for the District and Territory of Hawaii.*

INTER-ISLAND STEAM NAVIGATION CO.,
LTD., an Hawaiian Corporation, Owner of the
Steamer "NIIHAU," for Itself, the Officers
and Crew of Said Steamer, and Other Servants
of Said Owner,

Libelant,

vs.

THE AMERICAN SCHOONER "HALCYON,"
Her Tackle, Apparel, Machinery, Boats, Fur-
niture, Appurtenances, Cargo and Freight
Money,

Libelee. [1A]

Clerk's Statement Under Admiralty Rule 4.

TIME OF COMMENCEMENT OF SUIT.

January 17, 1914: Verified Libel was filed and
Monition was issued to the United States Marshal for
the District of Hawaii.

*Page-number appearing at foot of page of original certified Apostles on
Appeal.

NAMES OF ORIGINAL PARTIES.

LIBELANT: Inter-Island Steam Navigation Company, Limited, an Hawaiian corporation, owner of the steamer "Niihau," for itself, the officers and crew of said steamer and other servants of said owner.

LIBELEEE: The American schooner "Halcyon," her tackle, apparel, machinery, boats, furniture, appurtenances, cargo and freight money.

CLAIMANT: J. A. T. Olsen, Master of the American schooner "Halcyon," her tackle, etc.

DATES OF FILING OF PLEADINGS.

January 17, 1914: Libel.

January 20, 1914: Claim of J. A. T. Olsen, Master.

February 24, 1914: Answer.

ATTACHMENT OF PROPERTY AND PROCEEDINGS THEREUNDER.

January 17, 1914: Monition was issued and delivered to the United States Marshal for the District of Hawaii. Said Monition was thereafter returned into court with the following return by the said marshal. "In obedience to the within Monition, I attached the American schooner 'Halcyon,' etc., therein described, on the 19th day of January, 1914, and have given due notice to all persons claiming the same that this Court will, on the 23d day of January, 1914 (if that day be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to trial and condemnation thereof, should no claim be interposed for the same. (Sgd.) E. R. Hendry, United States Marshal, Honolulu, January 20th, 1914." [2]

January 20, 1914: Claim filed by J. A. T. Olsen, Master of said schooner "Halcyon," her tackle, etc., with a bond for the release of the said American schooner "Halcyon," in the sum of Twenty-one Thousand Dollars (\$21,000), which amount is double the amount of the Libel, as per section 941 of the Revised Statutes of the United States, whereupon a release to the United States Marshal for the District of Hawaii was issued by the clerk of said Court.

TIME WHEN TRIAL WAS HAD.

The above-entitled cause came on regularly for trial in the United States District Court for the Territory of Hawaii, before the Honorable Sanford B. Dole and the Honorable Charles F. Clemons, Judges of said District Court on the following days, to wit: January 31, 1914; February 2, 1914; February 3, 1914; August 6, 1915; August 17, 1915; August 18, 1915; August 19, 1915; September 14, 1915.

At the trial of said cause the following witnesses were examined *viva voce* and gave their evidence in open court before the said Judges of said court, to wit: Witnesses called on behalf of the Libelants: Frank Carlson, Moki, Manuel Lacerdo, Kaimi, Ralph Balding, R. W. Filler, H. P. Morton, W. F. Thompson, Capt. W. C. Bruhn, F. Mosher, David Hao, Jr., A. S. Cantin and L. Paulos. Witnesses called on behalf of the libelee: Fred. Sach, J. F. Joseph, Nels Piersen, William Clover, J. A. T. Olsen, John D. Easton, A. Duvell, E. F. Nichols.

December 6, 1915: Decision by Dole, J.

December 30, 1915: Decree, signed by Clemons, J.

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December 31, 1915: Notice of Appeal.

January 4, 1916: Bond for Costs on Appeal.

January 29, 1916: Assignment of Errors. [3]

Clerk's Certificate to Statement Under Admiralty Rule 4.

United States of America,
Territory of Hawaii,—ss.

I, George R. Clark, Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled cause; the names of the original parties thereto and those who have become parties, before the appeal; the several dates when the respective pleadings were filed; an account of the proceedings showing attachment of the said vessel and her release under bonds; the time when the trial was had and the names of the Judges hearing the same; the date of entry of the final decree and the date when the notice of appeal was filed, in said case.

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed the seal of said District Court
this 10th day of July, A. D. 1916.

[Seal] **GEORGE R. CLARK,**
Clerk U. S. District Court, Territory of Hawaii. [4]

*In the District Court of the United States in and
for the District and Territory of Hawaii.*

ADMIRALTY—NO. 139.

INTER-ISLAND STEAM NAVIGATION CO.,
LTD., an Hawaiian Corporation, Owner of the
Steamer “NIIHAU,” for Itself, the Officers
and Crew of Said Steamer, and Other Servants
of Said Owner,

vs.

THE AMERICAN SCHOONER “HALCYON,”
Her Tackle, Apparel, Machinery, Boats, Fur-
niture, Appurtenances, Cargo and Freight
Money,

**Order Extending Time to and Including April 15,
1916, to File Apostles on Appeal.**

Good cause appearing therefor, it is hereby ordered that the American schooner “Halcyon,” etc. libelee, in the above-entitled cause, may have to and including the 15th day of April, — 1916, within which to prepare, serve and file their assignment of errors and other appeal papers on appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree heretofore made and entered in said cause by the District Court of the United States for the Territory of Hawaii, and also may have to and including said 15th day of April, —, 1916, within which to procure to be filed in the said United States Circuit Court of Appeals for the Ninth Circuit the apostles on appeal from said final decree

6 *The American Schooner "Halcyon" et al. vs.*

in said cause certified by the clerk of said District Court.

Dated Honolulu, T. H., March 16, 1916.

CHAS. F. CLEMONS,
Judge U. S. District Court.

[Endorsed]: #139. In the U. S. District Court, Territory of Hawaii. Inter-Island Steam Navigation Co. vs. The American Schr. "Halcyon," etc. Order Extending Time. Filed Mar. 16, 1916. Geo. R. Clark, Clerk. By Wm. L. Rosa, Deputy Clerk. [5]

[Title of Court and Cause.]

**Order Extending Time to and Including May 15,
1916, to File Apostles on Appeal.**

Good cause appearing therefor, it is hereby ordered that the American schooner "Halcyon," etc. libelee, in the above-entitled cause, may have to and including the 15th day of May, A. D. 1916, within which to prepare, serve and file their assignment of errors and other appeal papers on appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree heretofore made and entered in said cause by the District Court of the United States for the Territory of Hawaii, and also may have to and including said 15th day of May, A. D. 1916, within which to procure to be filed in the said United States Circuit Court of Appeals for the Ninth Circuit the apostles on appeal from said final decree in said cause certified by the clerk of said District Court.

Dated Honolulu, T. H., April 14, 1916.

CHAS. F. CLEMONS,
Judge U. S. District Court, Territory of Hawaii.

[Endorsed]: #139. In the U. S. District Court, Territory of Hawaii. Inter-Island Steam Navigation Co. vs. The American Schooner "Halcyon," etc. Order Extending Time. Filed Apr. 14, 1916. George R. Clark, Clerk. ———, Deputy Clerk.
[6]

[Title of Court and Cause.]

**Order Extending Time to and Including June 15,
1916, to File Apostles on Appeal.**

Good cause appearing therefor, it is hereby ordered that the American schooner "Halcyon," etc. libelee, in the above-entitled cause, may have to and including the 15th day of June, A. D. 1916, within which to prepare, serve and file their assignment of errors and other appeal papers on appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree heretofore made and entered in said cause by the District Court of the United States for the Territory of Hawaii, and also may have to and including said 15th day of June, A. D. 1916, within which to procure to be filed in the said United States Circuit Court of Appeals for the Ninth Circuit the apostles on appeal from said final decree in said cause certified by the clerk of said District Court.

Dated Honolulu, T. H., May 15th, 1916.

CHAS. F. CLEMONS,
Judge U. S. District Court, Territory of Hawaii.

[Endorsed]: #139. United States District Court, Territory of Hawaii. Inter-Island Steam Navigation Co., Ltd., vs. Amer. Schr. "Halcyon," etc. Order Extending Time. Filed May 5, 1916. George R. Clark, Clerk. By Ray B. Rietow, Deputy Clerk.
[7]

[Title of Court and Cause.]

**Order Extending Time to and Including July 15,
1916, to File Apostles on Appeal.**

Good cause appearing therefor, it is hereby ordered that the American schooner "Halcyon," Libelee, in the above-entitled cause, may have to and including the 15th day of July, A. D. 1916, within which to prepare, serve and file their assignment of errors and other appeal papers on appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree heretofore made and entered in said cause by the District Court of the United States for the Territory of Hawaii, and also may have to and including said 15th day of July, A. D. 1916, within which to procure to be filed in the said United States Circuit Court of Appeals for the Ninth Circuit the apostles on appeal from said final decree in said cause certified by the clerk of said District Court.

Dated Honolulu, Hawaii, June 15, 1916.

CHAS. F. CLEMONS,
Judge U. S. District Court, Territory of Hawaii.

[Endorsed]: No. 139. In the District Court of the United States for the Territory of Hawaii. Inter-Island Steam Navigation Co., Ltd., Libelant, vs. The

American Schooner "Halcyon" etc., Libelee. Order.
Filed June 15, 1916. George R. Clark, Clerk.
By Wm. L. Rosa, Deputy Clerk. [8]

[Title of Court and Cause.]

**Order Extending Time to and Including July 30,
1916, to File Apostles on Appeal.**

Good cause appearing therefor, it is hereby ordered that the American schooner "Halcyon," etc., libelee, in the above-entitled cause, may have to and including the 30th day of July, A. D. 1916, within which to prepare, serve and file their assignment of errors and other appeal papers on appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree heretofore made and entered in said cause by the District Court of the United States for the Territory of Hawaii, and also may have to and including said 30th day of July, A. D. 1916, within which to procure to be filed in the said United States Circuit Court of Appeals for the Ninth Circuit the apostles on appeal from said final decree in said cause certified by the clerk of said District Court.

Dated Honolulu, Hawaii, July 10, 1916.

CHAS. F. CLEMONS,

Judge U. S. District Court, Territory of Hawaii.

[Endorsed]: No. 139. In the District Court of the United States for the Territory of Hawaii. Inter-Island Steam Navigation Co., Ltd., Libelant, vs. The American Schooner "Halcyon" etc., Libelee. Order.

Filed Jul. 10, 1916. George R. Clark, Clerk.
———, Deputy Clerk. [9]

[Title of Court and Cause.]

Libel.

To the Honorable SANFORD B. DOLE, Judge of
the United States District Court in and for the
District and Territory of Hawaii:

The libel of the Inter-Island Steam Navigation Company, Limited, a corporation duly organized and existing under and by virtue of the laws of the Territory of Hawaii, owner of the steamer "Niihau," whereof W. C. Bruhn is master, against the American schooner "Halcyon," whereof J. A. T. Olsen is master, now lying at the Port of Hilo, Island of Hawaii, Territory of Hawaii, and within the admiralty jurisdiction of this Honorable Court, her tackle, apparel, machinery, boats, furniture, appurtenances and cargo, now or lately on board said schooner, and including any and all portions of said cargo which are now or may be in course of discharge from and after the time of assistance rendered by libelant to said schooner as hereafter alleged, and also against the freight money of said schooner, and against all persons lawfully intervening for their interest therein, in a [10] cause of salvage, civil and maritime, alleges as follows:

I.

That said libelant, Inter-Island Steam Navigation Company, Limited, now is and at all the times hereinafter mentioned was a corporation duly organized

and existing under and by virtue of the laws of the Territory of Hawaii, and the owner of the said steamer "Niihau."

II.

That, during all of the times herein mentioned, said steamer "Niihau" was and now is of the tonnage of 341 tons, and had a crew of 37 men besides her master, and that said steamer then was and now is staunch and strong, well manned, tackled and appointed, well equipped for salvage purposes, and of the value of \$55,000.

III.

That during all of the times mentioned in this libel the said American schooner "Halcyon" was and now is a vessel of the tonnage of 293 tons, having three masts, and of the value of \$3,000, and that said schooner was laden with a valuable cargo of lumber destined for the Port of Hilo aforesaid, the value of which together with her freight money was upwards of the sum of \$7,000.

IV.

That during the night following the 12th day of January, 1914, the said schooner theretofore lying moored to the Hilo side of the railroad wharf (so-called) in said harbor of Hilo, broke loose from her moorings by reason of the violence of the wind and sea then prevailing, and drove toward the rocky shore of said harbor at or near the mouth of the Waiakea (or Waiolama) River, and was in close proximity to the rocks and lava reef. That when a member of the crew of said steamer "Niihau" was on his way, with others, to join said steamer, at the hour of 3:45 on

the morning of January 13th, 1914, he was hailed by someone on board said schooner, who stated that the schooner was ashore and asked that assistance [11] be rendered as soon as possible. That said message was forthwith carried to the master of said steamer "Niihau," then lying at anchor in Hilo Bay, some distance therefrom, whereupon said steamer proceeded immediately to the assistance of said schooner. That, in attempting to render assistance to said schooner the said steamer was obliged to risk fouling her propeller on intervening buoys in the darkness, and, on account of the close proximity of said schooner to the rocks, to steam as closely as possible and then drop anchor and pay out chain to get into position near said schooner. That said steamer then dispatched a small boat with a hawser to be placed on board said schooner, holding said boat from being carried away by the wind and sea by attaching thereto and paying out a surf-line. That the hawser having been so placed on board said schooner and made fast thereon, said steamer began heaving on her anchor chains and steaming with her engines, and towed said schooner out into Hilo harbor, to the usual anchorage ground for like vessels and thereupon said schooner dropped anchor and cast off or cut off said hawser.

That thereafter, the said steamer having dropped her own anchors, it was noticed by the master of said steamer that said schooner again began to drag anchor, at or near the hour of eight o'clock in the morning, whereupon the master of said steamer placed his vessel in a position to again render aid,

dropping both anchors, paying out about 80 fathoms of chain to each anchor, and the hawser of said steamer was again put in the boat to be sent to said schooner, the said boat being again controlled by a surf-line from the steamer. Said boat had almost reached said schooner when distress signals were set by said schooner for immediate assistance. Said line was again passed on board said schooner and there made fast, whereupon said steamer, by again heaving on her anchor chains and steaming with her engines, towed said schooner to a place of safety in said harbor, and thereafter, by request of the master of said schooner, continued to hold said [12] schooner in a safe position for the remainder of said day and throughout the succeeding night, and did not release her until the morning of the 14th of January, when the wind and sea had abated sufficiently to enable said schooner to hold at her anchor.

That at the time said schooner had for the second time dragged away or broken from her moorings she drifted rapidly toward the shore and was actually ashore and pounding upon the reef and was turning broadside and was almost wholly broadside when by the efforts of said steamer she was towed free from said reef and out into the harbor as aforesaid.

That for some time preceding the night of January 12th, and during all of that night, and all of the 13th of January, 1914, the wind was high, blowing a gale, at times of a velocity of forty miles an hour, directly toward the inner shore of the Hilo harbor, and the sea was heavy, with large swells, and the surf high, and had it not been for the assistance rendered said

14 *The American Schooner "Halcyon" et al. vs.*

schooner by said steamer, as above set forth, the said schooner would, upon either of the occasions above described, have become a total loss together with her cargo on board. That said schooner and cargo were saved from total loss solely by and through the efforts of the said steamer "Niihau," her master and crew.

V.

That the said steamer and boat, and the persons thereon, were exposed to some risk and peril during said salvage operations, and particularly during the second rescue of said schooner, on account of the gale and heavy seas prevailing and the certainty of destruction of said steamer by being driven ashore had her anchor chains broken and said steamer become in any manner disabled. [13]

VI.

That the services performed by the libelant as aforesaid were of a salvage nature and were of great value to said schooner "Halcyon," which without the aid thereof, would have become a total loss together with her cargo. That the libelant, by reason of said services so rendered deserves and is justly entitled to fair and proper salvage as a reward which is usually granted by a court of admiralty in such cases, and that the fair value of said services is the sum of Four Thousand Dollars.

VII.

That all and singular the premises are true and within the admiralty jurisdiction of this court.

WHEREFORE, libelant prays that process in due form of law according to the course and practice of

courts of admiralty and this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the said schooner "Halcyon," her tackle, apparel, machinery, furniture, boats, appurtenances, cargo and freight money aforesaid, and that all persons having or claiming to have any right, title, claim or interest in said American schooner "Halcyon," her tackle, apparel, furniture, machinery, boats, appurtenances, cargo and/or freight money aforesaid, be cited to appear and answer upon oath all and singular the matters aforesaid, and that this Honorable Court may be pleased to decree a reasonable and proper salvage to be due the libelant as compensation for its said services, as shall seem to this Court meet and reasonable, together with its costs in this behalf; and that the said American schooner "Halcyon," her tackle, apparel, furniture, machinery, boats, appurtenances, cargo and freight money aforesaid, may be condemned and sold to pay said salvage with costs; and with all other proper charges and expenses; and that libelant may have such other and further relief in the premises as in law and justice it may be entitled to. [14]

Dated, Honolulu, T. H., January 17th, 1914.

INTER-ISLAND STEAM NAVIGATION
COMPANY, LIMITED.

By (Sgd.) JAMES A. KENNEDY,

Its President.

(Sgd.) SMITH, WARREN, HEMENWAY &
SUTTON,

Proctors for Libelant.

United States of America,
Territory of Hawaii,
City and County of Honolulu,—ss.

Now comes James A. Kennedy, and being first duly sworn, upon oath deposes and says:

That he is the president and manager of the Inter-Island Steam Navigation Company, Limited, a Hawaiian Corporation, libellant in the foregoing libel, and is authorized to make this oath and prosecute this suit on behalf of said libellant. That he has acquired a knowledge of the matters and things set forth in said libel from representations made by the master and some of the members of the crew of the steamer "Niihau" and other witnesses of the matters aforesaid; and that the matters and things so set forth in said libel are true to the best of deponent's knowledge, information and belief.

(Sgd.) JAMES A. KENNEDY.

Subscribed and sworn to before me this 17th day of January, 1914.

(Sgd.) F. L. DAVIS, [Seal]
Deputy Clerk, United States District Court, Territory of Hawaii. [15]

Order for Process of Attachment and Monition.

Upon reading and filing the foregoing libel, it is hereby ordered that process of attachment issue as prayed for in said libel against the said American schooner "Halcyon," her tackle, apparel, machinery, furniture, boats, appurtenances and cargo laden on

board and which may have been or be discharged from said vessel since the 13th day of January, 1914, wherever found, and the freight money; and that all persons claiming any interest in the same or any part thereof be notified according to the rules and practice of this Court to appear before me on Friday, the 23d day of January, 1914, at 10 o'clock A. M. of said day.

Dated Honolulu, T. H., January 17th 1914.

(Sgd.) S. B. DOLE,

Judge of the District Court of the United States in
and for the District and Territory of Hawaii.

UNITED STATES MARSHAL'S OFFICE.

MARSHAL'S RETURN.

The within Libel and Order were received by me on the 17th day of January, A. D. 1914, and is returned as executed on the 19th day of January, A. D. 1914, at Hilo, Hawaii, upon the American schooner "Halcyon" her tackle, apparel, &c., and her cargo now being discharged, by handing to and leaving with J. A. T. Olsen, Captain of the said American schooner "Halcyon," a certified copy of the within Libel and Order, posting public notice of attachment on the mainmast of said American schooner, and leaving W. A. Fetter as custodian in charge of the said American schooner and Alfred Fragas as custodian in charge of the cargo now being discharged from the said American schooner "Halcyon" and now lying on the wharf at Hilo, Hawaii.

Dated Honolulu, T. H., January 20, 1914.

(Sgd.) E. R. HENDRY,

United States Marshal.

[Endorsed]: No. 139. (Title of Court and Cause.)
Libel and Order. Filed Jan. 17, 1914. A. E.
Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy
Clerk. [16]

Monition and Return Thereto.

*In the District Court of the United States, for the
Territory of Hawaii.*

The President of the United States of America, to
the Marshal of the United States of America for
the Territory of Hawaii, Greeting:

WHEREAS, a Libel hath been filed in the District
Court of the United States for the Territory of
Hawaii, on the 17th day of January, A. D. 1914, by
Inter-Island Steam Navigation Company, Limited,
a Hawaiian corporation, owner of the steamer
"Niihau," etc., against the American schooner
"HALCYON," her tackle, etc., cargo and freight
money, for the reasons and causes in the said Libel
mentioned, and praying the usual process and moni-
tion of the said Court in that behalf to be made, and
that all persons interested in the said vessel, her
tackle, etc., cargo and freight money, may be cited
in general and special to answer the premises, and
all proceedings being had that the said vessel, her
tackle, etc., cargo and freight money may for the
causes in the said Libel mentioned, be condemned
and sold to pay the demands of the Libelants.

YOU ARE THEREFORE HEREBY COM-
MANDED to attach the said vessel, her tackle, etc.,
and her cargo on board and also all cargo removed

from said vessel subsequent to the 13th day of January, 1914, wherever found, and her freight money, and to retain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said Libel, that they be and appear before the said Court, to be held in and for the Territory of Hawaii, on the 23d day of January, A. D. 1914, at ten o'clock in the forenoon of the same day, if that day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there interpose a claim for the same, and to make their [17] allegations on that behalf.

And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

WITNESS, the Hon. SANFORD B. DOLE, Judge of said court, at the City of Honolulu, in the Territory of Hawaii, this 17th day of January, A. D. 1914, and of our Independence, the one hundred and thirty-eighth.

[Seal]

A. E. MURPHY,
Clerk.

By (Sgd.) F. L. Davis,
Deputy Clerk.

SMITH, WARREN, HEMENWAY & SUTTON,
Proctors for Libelant.

Marshal's Return.

In obedience to the within Monition, I attach the Am. Schr. "Halcyon" therein described, on the 19th

'day of January, 1914, and have given due notice to all persons claiming the same that this Court will, on the 23d day of January, 1914 (if that day be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to trial and condemnation thereof, should no claim be interposed for the same.

(Sgd.) E. R. HENDRY,
United States Marshal.

Honolulu, January 20th, 1914.

[Endorsed]: No. 139. (Title of Court and Cause.)
Monition Returnable Jan. 23, 1914. Issued Jan. 17,
1914. Filed Jan. 20, 1914. A. E. Murphy, Clerk.
By (Sgd.) F. L. Davis, Deputy Clerk. [18]

[Title of Court and Cause.]

Claim.

To the Honorable SANFORD B. DOLE and the
Honorable CHARLES F. CLEMONS, Judges
United States District Court, Territory of
Hawaii.

Comes now J. A. T. Olsen, Master of the American schooner "Halcyon," and the lawful bailee thereof, and of her tackle, apparel, machinery, boats, furniture, appurtenances and cargo and states that he is the master of said schooner and the lawful bailee thereof as well as of her tackle, apparel, machinery, boats furniture, appurtenances and cargo for the owners of said schooner and the shippers of said cargo and entitled to intervene in the above-entitled cause on behalf of said schooner, her tackle, apparel,

machinery, boats, furniture, appurtenances and cargo and on behalf of said schooner's owners and on behalf of the shippers of said cargo. [19]

And said claimant thereupon prays this Honorable Court to be admitted to defend in said cause and that this Honorable Court will be pleased to decree the restitution of said schooner, her tackle, apparel, machinery, boats, furniture, appurtenances and cargo and otherwise right and justice to administer in the premises.

Dated Honolulu, Hawaii, January 20, 1914.

(Sgd.) J. A. T. OLSEN,

Master of Said American Schooner "Halcyon," and
Bailee Thereof and Her Tackle, Apparel, Ma-
chinery, Boats, Furniture, Appurtenances and
Cargo.

United States of America,
Territory of Hawaii,—ss.

J. A. T. Olsen, being first duly sworn upon oath, deposes and says that he is master of the American schooner "Halcyon" and the lawful bailee thereof, as well as of her tackle, apparel, machinery, boats, furniture, appurtenances and cargo and that as such bailee he is authorized to make and file the foregoing claim on behalf of the owners of said schooner, her tackle, apparel, machinery, boats, furniture and appurtenances, and on behalf of the shippers of her cargo; that he has read the said claim and knows the contents thereof and that the matters therein contained are true; that said schooner is an American schooner and that the nearest residence and

22 *The American Schooner "Halcyon" et al. vs.*

place of business of the owners of said schooner
[20] is more than one hundred *and* miles from Honolulu, Territory of Hawaii.

(Sgd.) J. A. T. OLSEN.

Subscribed and sworn to before me this 20th day of January, 1914.

[Seal] (Sgd.) F. L. DAVIS,
Deputy Clerk, United States District Court, Territory of Hawaii.

[Endorsed]: No. 139. (Title of Court and Cause.)
Claim. Filed Jan 20, 1914. A. E. Murphy Clerk.
By (Sgd.) F. L. Davis, Deputy Clerk. [21]

[Title of Court and Cause.]

Notice of Bonding.

To E. R. Hendry, Esq., Marshal of the United States
for the Territory of Hawaii.

Sir: A Bond, duly executed and approved, under Section 941 R. S. U. S., has been filed for the release of the American schooner "Halcyon," her tackle, etc., attached on the libel of the above-named libellant.

Amount of Bond \$8,000.

WITNESS, my hand and the seal of said court, this 20th day of January, A. D. 1914.

[Seal] A. E. MURPHY,
Clerk.

By (Sgd.) F. L. Davis,
Deputy Clerk.

UNITED STATES MARSHAL'S OFFICE.

MARSHAL'S RETURN.

The within Order of Release was received by me on the 20th day of January, A. D. 1914, and is returned as executed this 20th day of January, A. D. 1914, by handing to and leaving with J. A. T. Olsen, Master of the American schooner "Halcyon" a copy of the within Order of Release in Honolulu, Oahu, and sending a wireless message to custodian Fetter as follows:

"Fetter,
Hilo.

Schooner and cargo released. Turn same over to First Mate taking duplicate receipts for same. Notify Nichols.

HENDRY."

Order of Release returned this 20th day of January, A. D. 1914.

(Sgd.) E. R. HENDRY,
United States Marshal.

Dated, Honolulu, T. H., January 20, 1914.

[Endorsed]: Notice of filing of Bond. [22]

Minutes of Court—July 31, 1914.

(PROCEEDINGS AT THE TAKING OF THE
DEPOSITIONS DE BENE ESSE OF FRED
SACH, J. F. JOSEPH AND NELS PIERSEN
ON BEHALF OF THE LIBELLEE.)

(DOLE, Presiding Judge.)

From the Minutes of the United States District
Court, Saturday, January 31, 1914, Vol. 9,
part 1, Folio 38.

[Title of Court and Cause.]

On this day came Mr. L. J. Warren of the firm of
Smith, Warren, Hemenway & Sutton, proctors for
the above libellant and also came Mr. J. W. Russell,
proctor for the libellee and this cause was called for
the taking of certain depositions *de bene esse* in con-
formance with the stipulation heretofore entered
into by respective proctors. Thereupon the deposi-
tions of Fred Sachs, J. F. Joseph and Nels Piersen
were taken on behalf of the libellee and the time for
adjournment having arrived, it was by the Court
ordered that this cause be continued to February 2,
1914, at 11 o'clock A. M., for the further taking of
said depositions. [23]

Minutes of Court—February 2, 1914.

(PROCEEDINGS AT THE TAKING OF THE DEPOSITIONS OF WILLIAM CLOVER, ON BEHALF OF THE LIBELEEE.)

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Monday, February 2, 1914, Vol. 9, part 1, Folio 40.

[Title of Court and Cause.]

On this day came Mr. L. J. Warren of the firm of Smith, Warren, Hemenway & Sutton, proctors for the above libellant and also came Mr. J. W. Russell, proctor for the libellee, whereupon the depositions *de bene esse* of William Clover was taken on behalf of the libellee as per the stipulation of proctors heretofore filed herein. It was then ordered that this cause be continued to February 3, 1914, at 9 o'clock A. M., for the further taking of depositions. [24]

Minutes of Court—February 3, 1914.

(PROCEEDINGS AT THE TAKING OF THE DEPOSITION OF J. A. T. OLSEN, ON BEHALF OF THE LIBELLEEE.)

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Tuesday, February 3, 1914, Vol. 9, part 1, Folio 42.

[Title of Court and Cause.]

On this day came Mr. L. J. Warren of the firm of Smith, Warren, Hemenway & Sutton, proctors

for the above libellant and also came Mr. J. W. Russell, proctor for the libellee, whereupon the deposition *de bene esse* of J. A. T. Olson was taken on behalf of the libellee, pursuant to the Stipulation of proctors herein. [25]

[Title of Court and Cause.]

Before the Honorable S. B. DOLE, Judge of Said Court.

Depositions De Bene Esse.

APPEARANCES:

L. J. WARREN, Esq., of the Firm of Smith, Warren & Sutton, for Libellant.

J. W. RUSSELL, Esq., for Libellee.

Deposition of Fred Sach, for Libellee.

Direct Examination of FRED SACH, a witness on behalf of libellee, called and sworn.

Mr. RUSSELL.—Q. Your name is Fred Sach? Mr. Sach, you are a member of the crew of the schooner "Halcyon"? A. Yes, sir.

Q. And you came to Hilo on the schooner on the 13th of January?

A. I don't remember exactly the date.

Q. Well, it was along about the twelfth or thirteenth of January? [26] Somewheres along about the ninth? A. I don't remember the date.

Q. Do you recall the evening of January 12th? That is the night that the "Halcyon" broke from its moorings. A. The most part of it, I think.

Q. You remember that night? A. Yes, sir.

(Deposition of Fred Sach.)

Q. Now, at that time whereabouts in Hilo harbor were you moored?

A. Well, we were between the first and second buoy, I think it was. We had the head-lines fast on the first buoy and the stern-lines on the second buoy, and the schooner had his lines on the first buoy.

Q. Were you moored to the wharf?

A. It was a little off the wharf.

Q. Were there any lines running to the wharf?

A. There was the head-lines and stern-lines.

Q. So that while you were moored there the head-lines were tied to the wharf as were the rear-lines and you also had some lines running to the buoy?

A. We had offshore lines fore and aft.

Q. During that day what was the weather?

A. Oh, it was looking kind of bad. It was getting a breeze up.

Q. The day before she broke?

A. The day before she broke we was lying along-side and loading cargo.

Q. At what time did she break the lines?

A. We got wind about between nine and ten o'clock. We had to clear the starboard anchor. We dropped the anchor and she drifted about half a ship's length on the schooner and we got afoul of the schooner's bowsprit, and we hauled in the off-shore stern-line and kept clear of the schooner and she lie there.

Q. Then what did you do with reference to clearing the schooner back of you?

(Deposition of Fred Sach.)

A. We hove part of the anchor in, if I ain't mistaken and then we pulled on the offshore breast stern-line. [27]

Q. Did you loosen those lines, the rear-lines that tied the schooner to the wharf?

A. I think the head-line carried away.

Q. There was also a rear-line?

A. Yes, there was stern-lines.

Q. What did you do with reference to the stern-lines?

A. I just hauled her off and she laid there for that time being.

Q. And did she drift at that time?

A. No, sir, she laid there and then the wind blow that time.

Q. Then what happened?

A. Nothing happened then. That was the first time, you know, when we went adrift.

Q. Now, which way did you go?

A. We just go right in, a little ways off may be when we hauled the line in.

Q. In what direction did you drift?

A. Astern, towards the beach.

Q. How long a distance did you drift?

A. Must have been about half a ship's length from the first time we drifted.

Q. Then what happened?

A. Nothing happened that time. Then we got sent below again. Then about towards morning between two and three, that's the time she started to go in.

(Deposition of Fred Sach.)

Q. Between two and three in the morning?

A. Yes, sir.

Q. Then what happened?

A. The second mate, me, and another man, we got sent in a boat. I don't know what happened on board.

Q. At that time there was a line running to the buoy?

A. Yes, sir. As soon as we had that fast we came aboard and that line carried away.

Q. Then what was done then?

A. Well, we took the line forward, [28] and I think we started to heave on the offshore anchor again and heaved her in.

Q. And what did the ship do then?

A. I couldn't say exactly what she did. She lie there. She just swung back a little more.

Q. Did she leave the wharf?

A. She was over by the wharf.

Q. How far had she gone from the wharf?

A. About hundred feet, 150 feet.

Q. Then did you board the ship after you tied the line, the stern-line to the buoy? A. Yes, sir.

Q. And what was done there?

A. We went forward and took the line forward and hauled her in, kind of eased it.

Q. What was done, if anything, with reference to the anchors? A. Dropped both anchors out.

Q. So that you were then about a hundred feet out from the wharf with the stern-line tied to the buoy and your two anchors down? A. Yes, sir.

(Deposition of Fred Sach.)

Q. What was the situation or the condition of the vessel then with reference to whether or not it was holding?

A. She was holding then for that time being; may be drifting a little.

Q. You say may be drifting a little?

A. Yes, may be drifting a little.

Q. How long a time did you remain there as you've described after the head-line was tied to the buoy? A. That I couldn't say exactly.

Q. To the best of your recollection?

A. You mean after the boat came? The way we lay there before the boat came? Must have been an hour or so, but I couldn't say exactly.

Q. Did she, during that hour, move any distance?

A. She went back a little more.

Q. About how far back?

A. I should think about hundred or [29] two hundred feet.

Q. Then what occurred?

A. I believe an anchor carried away. The star-board anchor. The port anchor, I mean to say. Offshore anchor. She carried away.

Q. Did you see any boat come up there with any line?

A. No, sir, not that time. That boat came from the beach and went on board the steamer then.

Q. Now, then, with reference to this anchor carrying away; was that before or after you got this line?

A. I'm not quite certain of that.

(Deposition of Fred Sach.)

Q. Well, then, what occurred?

A. That's all we carried away at that time.

Q. You say there was a line brought to the vessel?

A. Yes, the steamer brought the line but I couldn't say whether it was before or after the anchor carried away. I didn't quite take notice. When the anchor carried away I was too busy.

Q. What was done with this line?

A. We made it fast around a bit.

Q. Then tell what happened?

A. We hove up our anchors and then he seemed to heave on his line.

Q. Who do you mean, "he"?

A. That steamer. I don't know her name. And he started and hove on his line and it carried away about thirty fathoms from our vessel. We had about thirty fathoms on board when the line carried away.

Q. Did you notice whether or not this line, that is the tow-line from the steamboat had become taut or not?

A. Yes, I noticed that several times.

Q. Were the anchors hove up before or after the line was attached to the schooner?

A. Well, he hove on the anchor after the line was fast. When we start heaving on the vessel on his line, we hove up our anchors. [30]

Q. Do you remember whether or not it was at that time that one of the anchors broke?

A. That I couldn't say if it was before or after that.

(Deposition of Fred Sach.)

Q. What was done with reference to the line that ran to the buoy?

A. When he start heaving we kept on slack it as quick as we could, then we had to let go them.

Q. That is after the steam vessel started towing you?

A. After the steam vessel got ahold of us and towing us.

Q. You loosened the line to the buoy? A. Yes.

Q. Had she had the full length of the line?

A. The full length. I believe she's lying out there yet.

Q. Did you see the line afterwards? A. Yes.

Q. And was she still tied to the buoy?

A. We let go from it and we took about five fathoms aboard the ship and the rest we couldn't get.

Q. How far had you been towed before this tow-line broke?

A. About a ship's length; very likely may be a little more.

Q. Then what occurred?

A. This tow-line carried and we dropped our star-board anchor.

Q. Then what was done? What did she do?

A. We lay there then and we start to drift.

Q. And in which direction did you start to drift?

A. We went kind of maybe off the wharf line, so we drifted then.

Q. Do you know where the postoffice is situated there in Hilo?

(Deposition of Fred Sach.)

A. No, sir. It was somewheres around where the boiler is. Some steamer went ashore they claim, and it was drifting that direction.

Mr. WARREN.—That big, black boiler?

A. The pilot say it was that direction.

Mr. WARREN.—Where a ship had gone ashore before? [31] A. A steamer.

Q. Now, just before the tow-line from the steam vessel was brought to the schooner were there any lights, or signals displayed on the “Halcyon”?

A. Yes, I think the bluish light; kind of bluish light.

Q. An this tow-line was brought how soon after the bluish lights were displayed?

A. I couldn't say.

Q. What is your best judgment?

A. I couldn't say I have any judgment about it all. I didn't take notice of it.

Q. When you started drifting, will you give us some idea as to how rapidly she was drifting, she was proceeding?

A. We she drifted very slowly but she was sure going ashore if we didn't get any help and the anchor had no hold.

Q. Do you recall when the flags were put up on the “Halcyon”?

A. Yes, I cleared those halyards myself for the flags.

Q. How near to the shore were you at that time?

A. Well, I couldn't say, but I know the pilot came out there and he was way inside of us. He broke

(Deposition of Fred Sach.)

down in his gasoline boat. It was between the beach and us.

Q. That is, the pilot-boat was between you and the beach. Well, in point of distance, give us your best judgment as to how far you were from the beach?

A. About two hundred feet very likely.

The COURT.—I should like the question asked how far they were from the breakers.

Mr. RUSSELL.—Q. How far were you from the breakers?

A. There was kind of ground swell, and I believe the second mate went over and heaved the lead. I was alongside the second mate and he said between seventeen and eighteen feet of water.

Q. Now, when you were drifting as you stated, did you see this [32] steam vessel?

A. I seen him, yes, sir, but I didn't take no notice of her.

Q. Whereabouts was she, was the steam vessel, with reference to the place where she was when the tow-line broke?

Mr. WARREN.—The first time, you mean?

Q. Yes, the first time. Had the steam vessel moved about any?

A. I fancy she laid in the same place.

Q. You think she laid in the same place?

A. Yes.

Q. How long a time elapsed between the time that the tow-line broke and the time that you hoisted up the flags?

(Deposition of Fred Sach.)

A. Must have been quite a while. About a couple of hours, very likely.

Q. And when you hoisted your flags what occurred? Did anybody come to you?

A. A boat came from that steamer and brought us another line, one similar to the line we had there before.

Q. This wire line? A. Wire line.

Q. And what was done with that line?

A. We made that fast and we started to heave again and when we got it taut she brought us a big line.

Q. What did you do with that line?

A. Made that fast too and we hove on both lines.

Q. Were you towed afterwards?

A. He started towing us when we got the two lines fast.

Q. Towed with both of those lines?

A. Towed with both of those lines, yes.

Q. Where were you towed to? In what direction?

A. To where them Hawaiian boats lie; them Matson boats lie.

Mr. WARREN.—The “Enterprise”?

A. Yes, the “Enterprise.” The “Enterprise” was lying there that time being and we towed kind of to her. [33]

Q. That was in a direction toward the whistling-buoy? A. Towards the whistling-buoy.

Q. Then what did you do when you got toward the “Enterprise”?

A. We dropped our anchor, the one we got left.

(Deposition of Fred Sach.)

Q. Did she hold?

A. She held then, yes; she held then.

Q. And was there a line running from you to the steam vessel?

A. Well, we had a line fast to that tow and during the night.

Q. Now, when the boat came there with those two lines, what was the condition of the sea?

A. Kind of rough.

Q. Was there any wind?

A. Well, the same as there had been all night.

Q. And before the boat came to you—that is, it was a life-boat was it not? A. Yes.

Q. How close to you did the life-boat come?

A. It came right close and heaved a heaving line on board and we pulled on that other line what we had and brought that hawser.

Q. Was the sea such as to render it difficult for the life-boat to approach?

A. No, sir; there was two or three gasoline boats went all around the vessel at the time the boat brought us the line.

Q. Did the schooner strike shore?

A. I don't think so. I didn't hear nothing.

Q. Did you feel any shock?

A. Not the time being; not the time when we was in there.

Q. Before the life-boat came out to you with the lines, had you seen it? Had you observed it until it was near the vessel?

A. You mean the first time?

(Deposition of Fred Sach.)

Q. No, the second time, the last time?

A. I don't quite understand you.

Q. Before the boat came to you to give you the line, the lines, did you see it at any time before?

A. You mean the second time? The steamer was lying there right along. [34]

Q. And did you see this boat anywheres about the steamer?

A. She was lying astern, alongside, on her quarter.

Q. And was the boat in the water?

A. Yes, the boat was in the water.

Q. And you saw her there for how long a time.

A. I ain't quite sure. I seen the boat but never took notice; a fellow generally don't take notice of a thing like that. I know the first time when we came there it was lying there quite a while too before we ever begun to move.

Q. What boat was it that was there quite a while?

A. The steamer that towed us. She was lying outside then she came in and I was around the deck and the mate was there too, I think, one or two men was there, and I said—

Q. Never mind what you said. When the bluish lights were displayed, did you notice where this steam vessel was?

A. About half ways on the deck there.

Q. Did you notice the vessel?

A. Yes. You mean the steamer?

Q. Yes. A. Yes.

Q. Did you notice how soon after the bluish lights were displayed that this vessel came towards you?

(Deposition of Fred Sach.)

A. I didn't take any notice of that.

Q. Do you remember how soon afterwards it was that you first observed this vessel coming in your direction? A. You mean the steamer itself?

Q. Yes?

A. No, I don't know for sure. I think it was lying there before the bluish light was.

Q. Did you at any time see this vessel, the steam vessel approaching in your direction?

A. Yes, sir. Yes, I did.

Q. And the first time that you noticed her was how long after the lights were displayed, kind of bluish?

A. That I couldn't tell you.

Q. Have you any recollection or any judgment at all as to that? [35]

A. Well, she was lying there about twenty minutes or half an hour before the boat came over to us. I didn't notice how long between the lights before the boat came. I got no recollection.

Mr. RUSSELL.—You may cross-examine. Just a moment.

Q. What is your position on the vessel?

A. Seaman.

Cross-examination of FRED SACH.

Mr. WARREN.—Q. I understand that the day before that night when she broke away you had been alongside the wharf?

A. Yes, sir, we came alongside.

Q. And had been discharging? A. Yes.

Q. And had let out your bow and stern-lines in order to stand off from the wharf a little ways during

(Deposition of Fred Sach.)

the night, is that right? A. Yes, sir.

Q. And you let those out a little bit so as to lay off from the wharf?

A. Not the stern and bow, the breast-line. We slacked a little on the offshore lines, on the bow-lines.

Q. How much line did you have out on the buoy, to the buoy that night? A. You mean off shore?

Q. Yes. A. I couldn't tell you the length of it.

Q. What is that, about?

A. I got no idea how far it is; just keeping the ship from going into the wharf; must be about hundred feet; very likely; may be a little more.

Q. Then you had a bow-line to a buoy?

A. Bow-line to a buoy.

Q. How long is that line?

A. That's the one I'm alluding to, the one to the wharf; that's the one, the shore-line.

Q. And what size line did you have between the schooner and [36] the wharf?

A. We had the end of a hawser; that's an eight-inch line; may be nine, may be ten-inch line.

Q. What size of line running to the buoy?

A. Five or six-inch, I think.

Q. And to the buoy at the stern?

A. The same kind of line.

Q. And at that time about how far was the stern of the schooner from the—

A. The stern of the schooner?

Q. Yes. A. Before anything carried away?

Q. Yes.

A. Well, must have been about twenty feet; very

(Deposition of Fred Sach.)

likely fifteen or twenty feet off the wharf. We have to haul in a little.

Q. As you were lying there you were toward the wharf, toward the land? A. Yes, sir.

Q. How far from the Ka Moi was that schooner?

A. Must have been about fifty feet.

The COURT.—Which way was the schooner from you?

A. The schooner's bow was forty or fifty feet away from us, lying astern.

Mr. WARREN.—Q. Her bow was pointing toward your stern?

A. Yes, sir.

Q. You spoke of buoys by numbers, do you put number one nearest the stern?

A. There is three buoys; there is one, two, three. There is no numbers on them.

Q. Which two of those three were used for your mooring? A. The furthest out.

Q. So there was one buoy closer in shore that you had no line to?

A. They were lying in the same direction with the wharf.

Q. And were there any anchors out from the schooner lying there that night before she broke away? A. Our anchors? [37]

Q. Yes.

A. There was an offshore anchor out there, must have been thirty fathoms.

Q. Your starboard anchor was not down then?

A. Starboard anchor was not down.

(Deposition of Fred Sach.)

Q. And what's the size of your anchors?

A. Well, the one we had out wasn't a very big anchor. I couldn't say the size of it.

Q. What is your best judgment of what it weighed?

A. I hardly could tell, sir.

Q. And about what time of the morning was it that you first began to get into trouble?

A. That was during the night.

Q. During the early hours of the morning, two or three o'clock?

A. Not when we first start. Between nine and ten o'clock that's the time we got called out. We was sleeping; that's the time she start to go adrift.

Q. Was it then that you collided with the schooner?

A. Yes, sir, that's the time we collided with the schooner.

Q. After you got her from the schooner you lay there a while before you started drifting again?

A. Yes.

Q. What time was it?

A. About three o'clock we started, and we kept working.

Q. And you still had the bow and stern-lines to the buoys? A. Yes, the lines was to the buoys.

Q. And the one anchor down?

A. That's the time we got called out to clear the second anchor and we dropped that anchor, the star-board anchor.

Q. Do you feel sure which anchor you had down first?

A. That's the port anchor; the offshore anchor.

(Deposition of Fred Sach.)

Q. Wasn't it the port anchor that you lost?

A. Yes, that's the port anchor we lost, but we had the starboard anchor down before we lost the port one.

Q. When was it that you lost the port anchor? How long after [38] you began to drift?

A. That I ain't positive sure. I was in the boat, me and the mate and another man.

Q. Who ran the line from the stern to the buoy?

A. I didn't notice.

Q. About what time in the morning was it that you saw these bluish lights you speak of?

A. Around three o'clock. Between three and four very likely.

Q. Now, have you any knowledge of how it came that a boat came from the steamer to help you?

A. No, sir, I don't know.

Q. You don't know what brought that boat?

A. No, sir, I don't know what brought that boat.

Q. Where were you when the boat came?

A. You mean the steamer itself?

Q. The steamer's small boat?

A. I was on the deck, then I went to the fo'c'sle-head and somebody sung out, and we got his line fast. I couldn't say what time she left the boat, the steamer itself, what time it was.

Q. Did you see anything of a boat in the harbor when the schooner, before the steamer's boat came with the line? A. No, sir, I did not.

Q. How long were you away from the schooner attempting to run the other stern-line?

(Deposition of Fred Sach.)

A. Must have been between twenty minutes and half an hour before we got back again. It was kind of rough getting alongside the buoy.

Q. Did you have any difficulty getting the line on the buoy?

A. No difficulty, but kind of undertow; heavy line to get on.

Q. How long had you been back to the schooner before the steamer's boat come?

A. That I couldn't tell you. I don't know the time.

Q. As near as you can tell us?

A. We got up and we give them a hand to haul that line on the fo'c's'le-head. We were standing there when the steamer's boat came. I don't know how long it took, may be half an hour; [39]

Q. Might have been more and might have been less?

A. Might have been more and might have been less, I couldn't say.

Q. When was the second anchor dropped? How long after she began to drift?

A. Right as soon as we got called out. It was the first thing we done when we got called out the second time.

Q. How much chain did you let out on the second anchor?

A. We didn't have much out; she wouldn't take no chain.

Q. About how much?

A. Six or seven fathom, but she got ahold; she wouldn't take no more.

(Deposition of Fred Sach.)

Q. She wouldn't take more?

A. She wouldn't take more. She was up and down; she wouldn't take no weight. We tried to give her more chain but she wouldn't hold taut.

Q. Did you at any time let out more chain on that anchor, that second anchor?

A. I think the boat had ahold of us then and we started in heaving them up.

Q. Heaving up both of your anchors?

A. Yes.

Q. You're not sure of that?

A. I ain't sure if the other was gone or not.

Q. What kind of windlass was it?

A. The old-fashioned windlass, up and down. I don't know how to describe it.

Q. Were any soundings taken around the schooner at the time you dropped the second anchor?

A. I don't know.

Q. Any soundings taken at all that night before daylight?

A. I was around all over. Maybe some time afterwards I heard the second mate taking the soundings, but that was the other time.

Q. How far were you. You say you were perhaps a hundred feet from the wharf before you began to drift early that morning, two or three o'clock, three or four o'clock? About a hundred feet from the wharf?

A. Must have been more or less; not that much but around a hundred feet somewheres.

(Deposition of Fred Sach.)

Q. And you think you drifted about a ship's length more? [40]

A. Yes, about a ship's length more.

Q. Is that all that you drifted before the steamer got a line on or did she drift still more than that before the line was made fast?

A. I don't think she was really holding and didn't drift.

Q. Do you know where the Wainaku River is?

A. You mean—

Q. That stream that comes out, that fresh water stream? A. Yes.

Q. And that row of bolders just on the land side, the Hilo side? A. Yes.

Q. About how far was your schooner from those bolders when the steamer's line was put on?

A. I don't believe it was very far off; a ship's length, about two hundred feet.

Q. How long is your schooner?

A. One hundred and twenty to one hundred and fifty feet; I don't know how long it is.

Q. How far from the land or shore were you at the time that line came on?

A. Well, we was closer to the wharf. You mean where them bolders is? She was closer to the wharf, the land, but I don't know exactly what you mean. You see, there's the wharf there. We was closer to the wharf than to the land on the other side.

Q. I'll just indicate to you what I mean. Suppose this little sketch shows you the wharf and the shore-line coming down toward the river, and the bolders

(Deposition of Fred Sach.)

coming out from the river below there, where was the schooner? That is, how far from the shore-line?

A. This is supposed to be the river?

Q. This is supposed to be the river. These are the bolders.

A. This comes out a little more this way. We were about around here somewheres, I think; out here somewheres (indicating). [41] This is the bolders, where the river comes out.

Q. I'll show you a map of Hilo Bay, this being the Coast & Geodetic Survey Map No. 4103, and ask you to look at this, please. If this is the Hilo railroad wharf and down here is Wailuku or Wainaku River; here are the row of bolders to the shoreward of the wharf. Now, about where in here?

A. We was tied up about around here first; from here to there, I guess.

Q. That is, you drifted from the wharf towards, or in to that row of bolders?

A. Yes. Then I think they got ahold of us and we couldn't drift no more, and we swung clear of that.

Q. And you drifted which way? A. This way.

Q. Away from the land?

A. Yes, away from this wharf.

Q. I'm speaking now of the time that the steamer's boat came to put the line on that night, early that morning, how far were you then from those bolders?

A. Just about here.

Q. How much did your ship draw?

A. She didn't draw, couldn't be more than fourteen feet of water.

(Deposition of Fred Sach.)

Q. Will you please make a cross on this map to indicate the place where the schooner was at the time the steamer's boat first came with the line early that morning?

The COURT.—I suggest instead of making a cross he make a straight line giving the direction of the vessel.

A. We were laying right here.

Q. Mark on the map a little line indicating first where the schooner lay that night before she broke away.

A. She lay here. (Drawing.) That's the schooner. Now, here was the little vessel. What you call it?

Q. "Ka Moi"?

A. "Ka Moi." We started to drift. This is the bow. We drifted right underneath his bow.

Q. You drifted stern towards the bow of the "Ka Moi"?

A. Yes. We got ahold of the line here, away stern [42] there. We hauled in on that stern-line and got clear of that schooner. And she drifted like this.

Q. Draw a dotted line indicating the direction that you drifted and where you were when the steamer's line came to you that night. A. (Witness draws.)

Q. You were then lying bow toward the end of the wharf? A. Bow up, yes.

Mr. WARREN.—The names "Ka Moi" and "Halcyon" are marked on the map to indicate their first positions that night; also, the second position of the

(Deposition of Fred Sach.)

"Halcyon" called "Halcyon-2"; the other one, "Halcyon-1."

Q. Now, you say it was just a short time, the steamer had only towed you a little while before the line parted? A. Yes.

Q. Do you remember at all about what hour of the night it was or early morning that the steamer's line was made fast to the tow?

A. No, I don't remember that.

Q. What is your best judgment of the length of time that that line was made fast before it parted? How long had the steamer been pulling?

A. I got no idea.

Q. Would you say it was five minutes or an hour or two hours?

A. Bit longer than five minutes. I have no idea. I didn't take no notice of that, how long it towed before the line parted.

Q. Would it be nearer to an hour than five minutes?

A. Yes, it would be nearer to an hour than five minutes, I should think.

Q. Have you any idea what time it was in the morning that the line broke?

A. No, sir. It was daylight.

Q. Have you any idea how the line broke?

A. The line was taut and all at once it snapped; strength of the vessel must have broken the line.

Q. Did you see the line break?

A. No, sir, I didn't see it break. [43]

Q. Where were you on the schooner when it broke?

(Deposition of Fred Sach.)

A. Forward somewhere.

Q. How near the bow? A. Few feet.

Q. How far from the schooner when the line broke?

A. I don't know, I didn't take no notice.

Q. Did you take any notice of any of the buoys at that time? A. No, sir.

Q. About how far was the schooner from the wharf at that time?

A. When it carried away, must have been somewhere around the buoys when the line carried away. I didn't take no notice neither. I couldn't say exactly how she was.

Q. Did you see the end of the line when it parted?

A. Yes, we hauled it in.

Q. What was the appearance of the broken part?

A. Little frazzled out.

Q. Did you finally examine that personally?

A. We hauled it in and left it there. I never thought anything about it.

Q. You really didn't have any occasion to—

A. No, sir.

Q. To try and find out how it parted?

A. No, sir.

Q. It's just a supposition on your part that it wasn't strong enough, that's why it broke? What was the size of the line? A. Six-inch line.

Q. How much rope was there on that hawser that you pulled in on the schooner after it parted?

A. About thirty fathoms.

(Deposition of Fred Sach.)

Q. Are you speaking now of the entire length of the line?

A. What we had on board the schooner; the part that parted; what we pulled in on the schooner.

Q. How much line altogether, how much of that line altogether [44] on the schooner, 30 fathoms?

A. About thirty fathoms. That's the line what we pulled in from the end that parted and the end we had on board.

Q. Did you see the broken piece pulled on board?

A. Yes, sir, that broken piece we hauled on board.

Q. Did you see it come on board? A. Yes.

Q. How long did it take?

A. Didn't take long; couple of minutes maybe. It don't take long to haul a line like that, five or six men.

Q. What was the distance between the schooner and the steamer while the steamer was pulling?

A. It must have been about sixty fathom off from us; about sixty or seventy. Very likely at the time she was pulling, my estimation was that the line parted about half ways between us and the schooner.

Q. You didn't see it part?

A. No, I didn't see it part.

Q. Where was the steamer with respect to the end of the wharf at that time?

A. It wasn't clear of the wharf.

Q. She wasn't near the wharf?

A. It wasn't clear of the wharf.

Q. Just indicate on this map the place where the schooner "Halcyon" was when the line parted?

(Deposition of Fred Sach.)

A. We was inside of the wharf; we wasn't outside the wharf, but I couldn't say exactly where it was. We wasn't clear of this point here. This is the point of the end of the wharf. We wasn't clear of that.

Q. How much of the distance between where the line had been put on and the end of the wharf had you covered before the line broke? How far had you gone?

A. Couldn't tell you. It wasn't much.

The COURT.—Q. Was the steamer inside the end of the wharf?

A. Yes, sir, the steamer was in, he was anchored inside here when he had ahold of us.

Mr. WARREN.—Q. Will you mark the steamer?
[45]

A. If this is us, she must have been lying about here.

Q. The steamer? A. Yes.

Q. Will you mark that? When they first sent a line to you?

A. When they first sent a line to us, I don't know how much distance it is. That's where he dropped his anchor the first place.

Q. We'll call that steamer-1 where it dropped the anchor. After the lines were put on did the steamer go ahead?

A. He dropped his anchor and slacked his anchor chain and lowered his boat. I wasn't on board the steamer, he must have slacked his anchors until he come toward us and the boat came to us and gave us the line.

(Deposition of Fred Sach.)

Q. That having been done, did the steamer take up her anchors at all? A. No, he did not.

Q. How do you know?

A. My estimation was that he was just heaving up his anchor chains.

Q. You don't think the steamer moved at all?

A. I looked a couple of times and the propeller wasn't moving. He must have just heaved on his anchor.

Q. Did you watch all the time to see if the propeller moved? A. Not all the time.

Q. It may have moved for all you know?

A. It may have moved for all I know. She would keep her propeller all the time.

Q. Would you say that you're sure the steamer didn't move at all from that position before the line broke? A. I couldn't say that.

Q. She may have steamed ahead?

A. She may have steamed ahead. I wouldn't say for sure.

Q. At the time the line broke where was the steamer?

A. My estimation, at the time the line broke, must have been in the same place.

Q. Same place, marked No. 1? [46]

A. I don't know if he got his anchors up.

The COURT.—Q. When the cable broke, was she still lying at anchor, the steamer?

A. I think he was. I think he had his anchors out and I never seen him heave his anchors up and I never seen his propeller move.

(Deposition of Fred Sach.)

Q. Can you say they were not taken up?

A. I didn't see it; maybe they did.

Q. Then, as far as you know, the steamer didn't take her anchors and didn't move forward to any appreciable extent?

A. That's my estimation. I don't know. I couldn't swear to that.

Mr. WARREN.—Q. When that line parted, were there any lines from the schooner to any buoy?

A. When the line parted?

Q. Yes. A. No, sir.

Q. Were there any anchors of the schooner down?

A. We dropped the anchor as soon as the line parted. I'm positive sure of that.

Q. You dropped—

A. The anchor we had left. We dropped that as soon as the line parted we dropped that anchor.

Q. And how much chain did you get out?

A. I couldn't tell you that; kept on slacking it all the time.

Q. How much chain have you on board there?

A. There's about forty-five fathom. It must have been close to sixty fathom of chain.

Q. You don't know how much of that was let out?

A. No. She drifted all the time. I guess we give her all we had.

Q. Now, what do you think was the total distance that the steamer moved the schooner forward?

A. You mean before the line parted?

A. Yes. How great a distance did the steamer

(Deposition of Fred Sach.)

pull the schooner before the line broke?

A. I don't know; I couldn't tell you. [47]

Q. Your best judgment.

A. It couldn't be much, I don't think. Maybe a ship's length. I'm not quite positive of that.

Q. Can you say it would be not more than a ship's length? A. I don't think no more than two.

Q. You don't think it would be that much?

A. No. I think he towed us off the wharf, kind of slant like; more off the wharf and we was farther off the wharf than we was when he took us first.

Q. Then you say when you dropped that anchor you lay there for some time before you began to drift again?

A. Yes. Then we went back. That was after the first time, when we dropped the anchor. Let me see now, I'm getting mixed up myself. Well, we laid there a little while and then he came out that other line.

Q. Who came out with the other line?

A. The steamer, after we dropped the anchor. We had that fast and then after a little while he came out with a bigger line. That line he brought us was pretty near the same size as the line that carried away.

Q. What I want to get at is, after the line had broken and the schooner had dropped her anchor, how long did she lie there before she began to drift again? A. We drifted gradually right along.

Q. Began to drift right away?

(Deposition of Fred Sach.)

A. Yes, gradually.

Q. Toward where the other vessel had gone ashore?

A. Yes, towards that boiler.

Q. And how long did she drift before the steamer moved out, or did the steamer move?

A. I couldn't tell you. I didn't take no notice. It came after us. He had his anchors up then, the second time, if I aint mistaken, and he [48] came after us. That's when the signals went up, the distress signal.

Q. Do you know whether the steamer moved before or after your signals went up?

Recess.

Q. When you stated that the "Halcyon" was perhaps two hundred feet from the beach, do you mean the line between land and water? A. Yes.

Q. How far from the "Halcyon" did you notice that black object on the beach in that neighborhood looking like it might be an old boiler just at the edge of the water? A. I noticed that.

Q. About how far from that was the schooner?

A. About two or three hundred feet.

Q. And which side of the schooner was that boiler on; on the starboard or port?

A. I think it was right astern.

Q. Right astern. And when Captain Mosher, you know the pilot? A. The pilot? Yes, sir.

Q. Came out to you when you were in that neighborhood, you say his launch was some distance in toward the shore from you?

(Deposition of Fred Sach.)

A. Between the shore and the ship.

Q. Did he anchor there? A. I think he did.

Q. Do you know what the trouble was that he didn't go aboard right away?

A. I don't know why he didn't want to come on aboard right away.

Q. Did you see his launch come out? A. Yes.

Q. And when did she come?

A. Come around us and went around the stern of us and then he stopped there, and then he had to drop his anchor. I think he dropped.

Q. He went around the stern of you to get to the port side? A. I don't know. He broke there.

Q. You say he came around the stern?

A. He came and went around the stern and he must have broke down about half ways between us and the beach. [49]

Q. About how long was it before he got on board?

A. I couldn't tell you the time. It wasn't long.

Q. Ten or fifteen minutes or less?

A. About fifteen minutes, very likely.

Q. Do you remember how he got on?

A. He got on board on the wharf.

Q. Which side? A. I'm not sure which side.

Q. And when did your flags go up, before or after Captain Mosher came out?

A. Well, just a little before Captain Mosher came aboard.

Q. Before he came out?

A. Before he come on board. I don't think he was out neither. I aint positive sure. I don't think he

(Deposition of Fred Sach.)

was out. I aint positive sure. There was another boat around there and I didn't take notice.

Q. What flags were put up?

A. I don't know the flags, the signals, what they meant. I don't know what they meant.

Q. Do you know what the letters were?

A. No, sir. I don't know nothing about the letters of the flags.

Q. Do you know why they were put up?

A. For help, to my estimation.

Q. And you were dragging anchor then?

A. Yes, we was dragging anchor then.

Q. And how much chain had you then, the full length of your chain or less?

A. Must have been the whole length; the way we drifted it must have been the whole length out or we would have given her more chain. That's my idea.

Q. That's the port, you had left?

A. That's the starboard anchor we had left. The port anchor went.

Q. Do you know the weight of that?

A. It's bigger than the other that we lost. I don't know the [50] weight, but it's bigger.

Q. Could you approximate the weight of it?

A. I got no idea of the weight of an anchor.

Q. Do you know whether it would be one thousand or two thousand?

A. It's bigger than that. It's more than two thousand.

(Deposition of Fred Sach.)

Q. Were there any soundings around the schooner?

A. I heard the second mate sing out there was seventeen feet of water.

Q. Where was that? A. On the stern.

Q. And the bow?

A. I don't know if anybody took soundings on the bow.

Q. The bow pointing in what direction?

A. The "Enterprise" was lying there and the bow pointed right up to the "Enterprise" and the stern was right up to the land, to the beach.

Q. Did you see the soundings taken yourself?

A. Yes, I seen that myself.

Q. How near were you to the mate?

A. About from me to you.

Q. And you heard him say there were seventeen feet? Did he give it in feet or fathoms?

A. Feet.

Q. How soon after the flags went up did the line come on board in the steamer's boat?

A. I aint sure what time. It didn't take long; I don't think it took longer than half an hour. I couldn't say how long, but not longer than half an hour.

Q. You think it was as much as half an hour?

A. Not as much; not more; maybe less; not more than half an hour.

Q. How much less?

A. I couldn't tell you. I didn't take notice of it.

Q. And before the boat started toward the schooner

(Deposition of Fred Sach.)

with the line, at that time you saw the boat at the stern of the steamer?

A. On the side of the steamer, on the quarter like.

[51]

Q. Did you see what they were doing?

A. No, I couldn't tell; I guess they was getting ready to go on board.

Q. Did you pay any particular attention to what that boat was doing?

A. No, sir. I know they was going to come away that's why I didn't pay no attention.

Q. Did you see others than the steamer boat?

A. There was two more.

Q. What were they? A. Gasolene launches.

Q. How long had they been out?

A. They was around there all the time.

Q. Were there any out as early as when the line parted?

A. No, I don't think so. I believe they came out the time the signals went up.

Q. Going back to the time the line parted, did you lend any more lines? Your line parted and you dropped your anchor. Did you lend any more lines?

A. We had no chains, we had no lines.

Q. Was any effort made to get a line?

A. Couldn't get a line nowheres. I don't think we had a line on board.

Q. The stern-line that had been to the bow had been parted where?

A. You mean the one we brought out with the boat?

(Deposition of Fred Sach.)

Q. Afterwards you tried to get the stern-line on the bow?

A. I took that stern-line forward and we used her for head-line.

Q. Now, after the line parted you dropped your anchor? A. Yes, sir.

Q. Then Captain Olson tried to get off lines to the buoy? A. We had no lines.

Q. Did he get part of your old line that was on the buoy? A. No.

Q. Where were you at that time?

A. I was around the deck. [52]

Q. You said that after that anchor was dropped you went below? A. That was daytime.

Q. I misunderstood you, I thought it was during the night. I'm speaking now of the time that line parted. That was in the morning, daylight?

A. Yes.

Q. Where did you go?

A. I was around all the time, around the deck.

Q. All the time? A. Yes.

Q. What direction was the wind blowing that morning?

A. Set right in to the, I don't know what direction it is.

Q. About in the direction that you had drifted? The sea was running that way? A. Yes.

Q. How long did the steamer keep hold of the schooner after she took her off the second time; took her out?

(Deposition of Fred Sach.) ,

A. You mean the time we had the two lines?

Q. You had the two lines. How long did she hold on that time?

A. I heard the pilot say, take us to safe anchor; and I guess they didn't understand him. And his launch went out and took us ahead to the "Enterprise."

Q. How do you know that?

A. I was standing alongside the pilot at the time he spoke to the men on his gasolene boat. He sung out from the fo'e's'le-head to heave away, to get us out to safe anchorage, and some way or other he didn't do it. I don't know if he understood the pilot. And he went up to the gasolene boat and he told him to get away and told him to pull us to safe anchorage. We was lying there about five minutes and then he started to pull us right to the "Enterprise," and we dropped the anchor there.

Q. Who took part in this conversation that you heard at that time?

A. Just the pilot; he was talking to his men there.

Q. Was Captain Olson anywhere around?

A. I don't know; I didn't see him. I guess he was around. [53]

Q. How was any message sent to the steamer from the schooner?

A. He just hollered, shouted, sung out to them. That's the time he told them to take us and give us a safe anchorage. If I aint mistaken, the boat came back and said they was going to take us out maybe a hundred feet from where we was lying, and he was

(Deposition of Fred Sach.)

going to hold us. I don't know if he was afraid to hold us.

Q. You mean to say after the steamer had put the line on you the second time, then you didn't go forward?

A. Kind of held us in the same position.

Q. Then this conversation took place?

A. Yes, that's the time the pilot sung out to the steamer to go ahead and take us to safe anchorage. I don't know if they didn't hear him or what was the matter. The pilot called his boat alongside, and one fellow went aboard and told them to take us right to the "Enterprise."

Q. Wait a minute. Did you hear the pilot call over to the steamer?

A. The pilot's man, the man that runs his launch.

Q. And tell the captain of the steamer?

A. I don't know if he told the captain of the steamer.

Q. How do you know that? A. I guess it.

Q. You saw him? A. Seen him going by there.

Q. How do you know what he said?

A. I'm not sure.

Q. You're just guessing? A. Just guessing.

Q. Where was the pilot? A. On board.

Q. Where was Captain Olson?

A. Around the deck somewheres. Maybe on the fo'c's'le-head, too.

Q. Did Captain Olson go over to the steamer?

A. No, sir.

(Deposition of Fred Sach.)

Q. Did the pilot? A. No, sir. [54]

Q. Are you sure? A. I'm sure of that.

Q. Did the pilot and the captain come over later?

A. Yes, later.

Q. How long after?

A. I couldn't tell the time. I never took notice of the time.

Q. Can't you do a little guessing?

A. No, sir, not in that way. I know exactly they went over. That's right. I can't guess about the time. I can't tell about the time. A fellow don't know the time. The fellows around the ship they hardly look at the time.

Q. Were any soundings taken after you had been drawn a hundred feet forward; any more soundings?

A. You say after we drew a hundred feet forward? I never said we drew about a hundred feet.

Q. You said the steamer pulled you away.

A. It pulled us away, but you said drew.

Q. After she had done that did you take any more soundings? A. I don't know.

Q. How far was the schooner from the "Enterprise" at the time the steamer stopped pulling that time? A. When we dropped our anchor?

Q. When you had been pulled a hundred feet from the beach, away from the beach, when the steamer stopped, how far was the schooner from the "Enterprise"? A. Quite a ways.

Q. How long? How far?

A. It was quite a ways off.

(Deposition of Fred Sach.)

Q. Well, approximately?

A. Four or five hundred feet, very likely. I don't know the distance of it.

Q. Where was the "Enterprise" lying with reference to the wharf?

A. We got moorings there. I don't know exactly to describe it; them moorings where them boats' lines make fast.

Q. You look at this map and try to mark the position where the "Enterprise" was lying?

A. If this is the wharf, the "Enterprise" must be lying somewheres around here. I aint sure, [55] but out here somewheres.

Q. You mark the best judgment you can give of the position of the "Enterprise." Will you please mark that on the map here?

A. Somewheres around here. (Marks.)

Mr. WARREN.—Witness marks a cross,—I put a circle around it,—marking it "Enterprise."

Q. Then I would like to have you indicate on this map about where it was that your schooner was when you say she was two hundred feet from the beach, when the line was put on the second time?

A. The second time?

Q. Yes.

A. (Witness marks.) The second time we had these boilers on the starboard quarter.

Mr. WARREN.—Witness marks cross which will be indicated as "Halcyon-3," as the position where she was when the line was put on the second time.

(Deposition of Fred Sach.)

A. Yes, when he had ahold of us.

Q. Now, from there how far did you say she proceeded; about two hundred feet? Oh, this "Halcyon-3" was after the steamer stopped pulling the second time? A. Stopped pulling, yes.

Q. Will you mark where she was before the steamer started pulling?

A. A little off here; about here.

Mr. WARREN.—Witness marks; call this "Halcyon-3a," "Halcyon-4," as being the position of the schooner at the time the line was put on the second time.

Q. How long after the steamer stopped pulling the second time was it before the pilot and Captain Olson went over to the steamer?

A. Safe anchorage, *then*, then the captain and pilot went over to the steamer.

Q. What do you call the safe anchorage?

A. Where we laid over night, the next night.

Q. You say that after she had been towed about a hundred feet then the steamer stopped, then this conversation took place about wanting the steamer to take you to a safe anchorage? A. Yes. [56]

Q. Now, between that time and the time that the pilot and captain Olson went over to the steamer, did the steamer move at all?

A. Well, sure they moved. Captain Olson and the pilot, they didn't went over to the steamer until they had us in safe anchorage.

Q. So that after she had pulled a hundred feet,

(Deposition of Fred Sach.)

then she pulled you some more?

A. Yes, sure. Then she pulled us to safe anchorage.

Q. How much did she pull you?

A. Somewheres around the "Enterprise."

Q. Now, will you mark on this map the position of the schooner when she let go that tow in what you call safe anchorage?

A. There's the "Enterprise," the bow; and our bow was about sixty or seventy feet from the "Enterprise."

Q. On the wharf side or opposite side?

A. Went all around on the wharf side, inside like.

Q. You were between the "Enterprise" and wharf? A. Yes. Close to the "Enterprise."

Q. And you lay there all day with two lines on?

A. Yes, she had two lines.

Q. Up to what time the next morning?

A. I don't know; I'm not positive about the time we went alongside the next morning. We let go the lines the next morning and went alongside the Enterprise and discharged some freight.

Q. It was all that day and the night following before you let go the lines?

A. Before we let go the lines, yes.

Q. During that time do you know whether Captain Olson went ashore? A. No, sir.

Q. Do you mean he didn't?

A. Not to my knowledge.

Q. Do you know whether he tried to?

A. No, sir. After we got to safe anchorage he

(Deposition of Fred Sach.)

turned in to sleep. He was up all that night.

Q. Now, I want to go back just a little bit. At the time you say there was a conversation as to the steamer taking you further [57] out, had the steamer, up to that time, used her propellers or was she just heaving on her anchors? Do you know?

A. No, to my knowledge, I don't know; not to my knowledge. The way he looks to me he just was heaving on his anchors.

Q. When this conversation was held about taking you out further, she took up her anchors?

A. She must have.

Q. Then she steamed?

A. Then she steamed, yes.

Q. You know that? A. Yes, sir.

Q. And how long a time were you stopped there at that first stop after you had come a hundred feet, how long a time did you stay in that position?

A. I didn't keep track of the time. I ain't sure of the time.

Q. A short time? A. Maybe half an hour.

Q. During that time were there two lines on the vessel?

A. Yes, sir, there were two lines there all of the time. He had first one line a little before he come out with a bigger line. Then there was two lines on the vessel when she was laying there.

Q. So that after she had come out, you say, about a hundred feet, was the second line put on?

A. No, she was on before that.

Q. Before that? A. Yes.

(Deposition of Fred Sach.)

Q. Those two lines having been put on remained on until you had gotten out to a safe anchorage?

A. Yes, they was on until we got to a safe anchorage.

Q. Out there were any changes made in your lines?

A. Same lines.

Q. Did the steamer let go the lines at all in moving and then take them on again out near the "Enterprise"? A. No.

Q. Do you know that?

A. I'm sure they couldn't have done that. I'm sure of that. Them two lines when we had them fast they stayed there until we come to safe anchorage; nothing happened.

Q. And when you got out to the safe anchorage were those same lines still without any change, or didn't they change the lines there? [58]

A. I don't believe so.

Q. You don't know?

A. No, I ain't sure. I think that's the same lines.

Redirect Examination.

Mr. RUSSELL.—Q. You spoke of being tied a little off the wharf there. That is, with the lines running to the buoys and to the wharf, and the position being some distance off the wharf? A. Yes.

Q. Isn't that the way you tied up for the night every night?

A. Yes, that's the way we tied up for the night every night, so she don't chew in.

Q. And did she do that? Chew?

(Deposition of Fred Sach.)

A. I say we do that in order to stop her from chewing.

Q. You spoke on your direct examination, also on your cross-examination, of running your headline out to the buoy there after you broke off from the wharf. Well, now, was that done before or after the lines were pulled?

A. You mean the time we went in the boat?

Q. Yes. A. Before the lines were pulled?

Q. Did you show the point of this hawser, that is, the tow line that was broken to Captain Mosher?

A. He seen it himself; didn't show it to him. The man was down pretty near alongside of it.

Q. Was there any other line there of thirty-fathom?

A. No, sir, we didn't have a piece of rope on board or another one like that.

Q. You saw Captain Mosher at one time on the vessel when this rope was there?

A. Yes, I seen him there. He was there when the line carried away. The pilot, you mean?

A. Yes, Captain Mosher.

A. I don't know the gentleman's name; the pilot.

Mr. RUSSELL.—That's all. [59]

Recross-examination.

Mr. WARREN.—Q. At the time that the line parted, you say Captain Mosher was there?

A. There was no pilot on board the time the first line parted, but he kept seeing the line laying there afterwards when he came aboard. That's what I mean to say.

(Deposition of Fred Sach.)

The COURT.—Q. Don't you know what direction the wind was blowing?

A. No, sir, I ain't got no idea the way the wind stands there.

Q. Can you say what direction the wind was blowing in relation to the wharf?

A. The same as the wharf was, that's the way I see was running.

Q. What was it that made the "Halcyon" swing out from the wharf, away from the wharf?

A. The stern-lines parted.

Q. If the wind was toward the wharf, why should she swing from there?

A. It must be the undertow.

Q. And I understand you to say that the wind was blowing right straight to the wharf?

A. The sea was running.

Q. Don't you know how the wind was blowing?

A. Right in same way.

Q. Was the wind blowing that way?

A. It wasn't from this way, it must have been this way.

Q. You drifted down to here and then what made a swing out to here?

A. My opinion that the current going out of this creek here. The current comes there and swings it. That's the only thing what I could see to keep us out of there.

Q. And when you were here, the furthest distance in, how far were you from the breakers?

(Deposition of Fred Sach.)

Mr. WARREN.—“Here” is “Halcyon-4.”

A. When we was the nearest ashore?

Q. Yes.

A. About two hundred feet right from the beach.

Q. Weren't the breakers very heavy?

A. I could see the ground swell, but it never broke.

Q. Were not the breakers very heavy? [60]

A. They wasn't breaking on top. We wasn't in that.

Q. They showed very plainly?

A. Yes, they showed up.

Q. How far were the breakers from the shore?

A. The breakers were astern from us, about a hundred feet away from us where they broke. We were off about two hundred feet from the beach, from the sand and the breakers, I don't think they ran in further than a hundred feet.

Q. That rope that broke, how old was it?

A. Rope from the boat?

Q. Yes.

A. Brand new; I think the first time they used it. It looked new to me.

Q. Do you know what kind of a bottom it was here where you let out your anchor?

A. No, sir, I got no idea.

Deposition of J. F. Joseph, for Libellee.

Direct Examination of J. F. JOSEPH, a witness on behalf of Libellee, called and sworn.

Mr. RUSSELL.—Q. Your name is J. F. Joseph?

A. Yes, sir.

Q. And you are the first mate on the “Halcyon”?

(Deposition of J. F. Joseph.)

A. Yes, sir.

Q. And you were the mate on the 12th. or 13th. of January, this year? A. Yes, sir.

Q. You came on the "Halcyon" off Hilo harbor about the 9th of January?

A. On the evening of the 9th.

Q. Were you aboard of the Halcyon on the evening of the 12th? A. The evening of the 12th?

Q. Yes. A. Yes, sir.

Q. And that was the evening when she broke her moorings? A. Yes, sir. [61]

Q. Now, where was the vessel located there on the 12th? A. When she broke her moorings?

Q. Yes. A. She was made fast to the wharf.

Q. The railroad wharf?

A. The railroad wharf.

Q. And on what side?

A. She was on the waterfront side.

Q. On the Hilo side?

A. On the Hilo side, yes.

Q. In what manner was she held there?

A. She was held there with a nine-inch line forward from the starboard bow, and a little over thirty fathoms of chain; on the port bow, thirty fathoms of chain on her anchor, and then she had a nine-inch line aft; starboard inshore line; and she had a six-inch line on the offshore side.

Q. Any anchors out?

A. One anchor out; port bow.

Q. Which was that? A. The port anchor.

Q. And you had two anchors on the vessel?

(Deposition of J. F. Joseph.)

A. We had two anchors on the ship, yes.

Q. What size of anchors?

A. The starboard anchor was an anchor, I should judge, about 1800 ton, and the anchor that's out, about 1500.

Q. You spoke of the moorings breaking, the lines breaking? About what time did that occur?

A. When the vessel broke her head-lines, about half-past nine that night.

Q. It was the head-line that ran to the wharf?

A. To the wharf, yes, sir.

Q. Now then, you state what occurred?

A. Well, after that head-line was carried away, I saw she was drifting down on the little "Ka Moi" then I called the captain and the second mate and we ran out and called the crew.

Q. Where was the "Ka Moi" situated with reference to the vessel?

A. She was right astern of us on the same side of the wharf.

Q. And how far from it?

A. She was probably less than a hundred feet astern of us.

Q. Proceed.

A. As I say, I called the captain [62] and we called the crew and let go of the starboard anchor right away before the vessel had got so far. Then she was right under the "Ka Moi's" bow and then we called all hands aft to pull on the offshore breast-line.

Q. The offshore breast-line is the line that ran?

(Deposition of J. F. Joseph.)

A. To the buoy.

Q. In which direction?

A. From the port quarter off from the wharf.

Q. What buoy was that?

A. That's the last buoy in.

Q. All right, proceed.

A. Well, we got that line hauled taut as much as we could by hand, then we hove a little on *the which* one it was I don't know. I couldn't see. When I seen that she had shipped clear of the "Ka Moi's" gi'boom, I hollered to the men to come aft to pull away on the other line, which they did. In the meantime, the first time, that was the time the "Ka Moi's" boom was coming down on our boat, we got out of danger. When we got in we laid there until three o'clock. We were fast both to the buoy and to the ground; that is with the anchors.

Q. How far had you proceeded from the place where you were originally?

A. Well, we had probably away from that wharf about probably six hundred feet.

Q. How far from the wharf were you when you were tied up originally?

A. How far were we? Well, when we made fast to the wharf we were about four feet off.

Q. You went out to a distance of about how many feet?

A. About six hundred feet off the wharf.

Q. When you got out there to that distance you were held in what manner?

(Deposition of J. F. Joseph.)

A. We were held by the two anchors forward and the bow-lines.

Q. And was that the same buoy-line that was on there originally?

A. The same buoy that was on there originally when she was brought in by the pilot and made fast to the wharf. [63]

Q. After you let go her anchors, did she continue to drift or do anything?

A. Well, we let go the starboard anchor in the first place; when I told you a while ago that I noticed she was drifting down she drifted down a little bit more.

Q. Then what was done?

A. After we hauled her up to the buoy, we couldn't do any more. We were fast to the ground and fast to the wharf. Then about three o'clock the captain came and called me. She was drifting in towards Wainaku, so we come to the conclusion we would get a new line, six-inch, and we ran this line to the same buoy.

Q. At this point had she drifted any distance from the time she was tied up there in the evening?

A. Yes, of course, she had drifted.

Q. About how far?

A. Well, I couldn't exactly say; probably she had drifted about the same distance, five or six hundred feet.

Q. Then what was done?

A. Then we ran that line to that buoy, but before they got to that buoy with that line, the first line that was on that buoy, snapped and, of course, when

(Deposition of J. F. Joseph.)

that line snapped, she threw her stern around over towards the mouth of Wainaku Creek. Then we got the second line. We got that to the buoy; then the vessel seemed to be in a dangerous place. I suppose the captain thought it best to signal.

Q. And then was there a signal given?

A. What is that?

Q. And then was there a signal given?

A. Then the captain used a flare-up light.

Q. And what occurred?

A. After the flare-up light was used, a little while after that, we heard a whistle and we noticed the "Niihau" had changed from her anchorage that night; she seemed to be coming over ahead of us and then she dropped her anchors. She had a boat was in the water all the time; and the boat was [64] coming towards our bow with a line on it, and we came down, took a line, and made it fast to the foremast.

Q. How long a time had elapsed from the time that you flared up your bluish signals until you got this tow-line aboard; until they came with the tow-line? A. Well, it was less than an hour.

Q. Was it close to an hour?

A. Pretty near to an hour.

Q. During that hour had the vessel moved any?

A. She didn't seem to me to have moved any.

Q. All right, now go ahead.

A. After we got that tow-line fast we had to pick up our anchors, and in attempting to weigh anchor, we lost the port anchor.

(Deposition of J. F. Joseph.)

Q. But this occurred after you got the tow-line tied to the vessel?

A. After the tow-line was made fast to the mast. Then we had to take up our starboard anchor. We got that ready to let go. Maybe he started towing on there, I don't know. I know he didn't have that tow-line on, must have been heaving on it and he heaved on that for quite a little while, for probably an hour, and then he started towing on us, and he hadn't been towing on us very long when that tow-line snapped. I was right there alongside the windlass when it snapped. I let go the starboard anchor.

Q. How long a distance were you towed when the anchor, when the tow-line snapped?

A. We were towed about probably six hundred or seven hundred feet.

Q. Well, then, you say you shipped your starboard anchor? A. Dropped the starboard anchor.

Q. Then what occurred?

A. After we dropped the anchor we paid out about twenty-five fathoms of chain and we lay there; then the wind got squally. We lay there and after a while she started to drag.

Q. Now, at this time, what was the direction of the wind? [65]

A. The wind, I should judge, about from north-northeast to north.

Q. And was the wind practically the same during the entire period with reference to direction?

(Deposition of J. F. Joseph.)

A. Yes, just about the same.

Q. And what was the direction of the swells, the sea?

A. Well, the swell probably was a little to, probably about north; might be a little to the westward of north.

Q. Now, after your starboard anchor was let out, what occurred?

A. Well, then, the vessel started to drift. She drifted, kept drifting and drifting and drifting right in towards the beach.

Q. And about how long had you drifted before the flags were put up?

A. All of two hours; probably more, but nothing less than two hours.

Q. During that time did you see the "Niihau"?

A. Yes, we saw her lying at anchor ahead of us.

Q. Did you see the life-boat there?

A. Now, I can't be sure whether her boat was in the water or not. I think it was in the water, and I think it was on the port quarter, made fast to the vessel.

Q. Do you remember when the flags were put up?

A. Yes, I remember that.

Q. How close to shore were you?

A. Well, when the flags were put up we might have been a hundred feet further from the first line of the surf.

Q. That is, the breakers?

A. The first line of the breakers, yes.

Q. And did you receive any response to the flags?

(Deposition of J. F. Joseph.)

A. Then, of course, when the flags went up, the "Niihau" she sent a boat down with another line to us.

Q. How long a time did it take that line to get to you after you put up your flags?

A. Probably inside of ten minutes.

Q. And what was done then?

A. Well, we got that line fast to the bit on the fo'e's'le-head and I think they tightened it, and then the "Niihau's" boat went back and give us another line.

Q. Now, did they, did the crew of the "Niihau" have any difficulty in going to you there?

A. Not that I could see. They had [66] a surf-line in their boat.

Q. And how did they get the line to you?

A. They simply backed away with their oars and as they did that simply payed out their line, allowing the boat to drift close enough to throw us this line.

Mr. WARREN.—It is agreed that this map upon which the witness Sach marked, may be marked for identification. (Libellee's Ex. "A.")

Mr. RUSSELL.—Q. I show you Libellee's Exhibit "B," identification.

Mr. WARREN.—A duplicate of the map of Hilo Bay.

Mr. RUSSELL.—Q. I will ask you if you recognize this as a map of Hilo Bay?

A. Yes, that's the map of Hilo Bay.

Q. Do you recognize this as the railroad wharf?

(Deposition of J. F. Joseph.)

A. Yes.

Q. Now, will you indicate there where the "Halcyon" was moored before she broke her line?

A. She was moored, I should judge, right about in here. (Indicating.)

Mr. RUSSELL.—Indicated as "Halcyon-1."

Q. Now, will you indicate there the position of the buoy to which the breast-line was tied as near as you can recall?

A. Well, that buoy should be about, I should judge, about in here.

Mr. WARREN.—Buoy-1.

Q. Now, what is your estimate of the distance from the wharf to the buoy that you have indicated here as Buoy-1? A. About three hundred feet.

Q. And where were you when the flare lights were flashed?

A. Just about here. (Indicating.)

Q. Will you just mark a little mark there indicating her position? That is, you note there the position, the location of the vessel. Will you, also, at the same time, draw a line there which would indicate her position?

The COURT.—You mean her length?

Mr. RUSSELL.—The length, yes.

A. (Witness marks.)

Mr. WARREN.—Witness makes mark indicated as "Halcyon-2." [67]

Mr. RUSSELL.—Q. Now, where was the buoy to which the "Halcyon" was tied when she was in a position that you have marked as "Halcyon-2"?

(Deposition of J. F. Joseph.)

A. That buoy ought to be about, that's the same buoy here, only that I've got this buoy a little too close to the wharf, but that was the same buoy.

Q. Now, as you have more closely examined the map, do you wish to make any changes with reference to the probable location of that buoy?

A. Well, I should say that the buoy ought to be over here.

Q. Then will you mark that?

A. (Witness marks.)

Mr. WARREN.—There is no objection to erasing the first mark.

Mr. RUSSELL.—Q. Now, at the time that the vessel was tied to this buoy, how far was she from the buoy at the time that you ran that line, that is, in the morning, out to the buoy? How far from the buoy was she? A. About three hundred feet.

Q. Now, when the tow-line was given you by the "Niihau," you were in about the position that you have indicated here as "Halcyon-2"? A. Yes.

Q. That's the first time?

A. The first time, yes.

Q. And in which direction did you proceed in that short tow that was made?

Mr. WARREN.—I object to that. The witness hasn't testified to any short tow.

The COURT.—Overrule the objection.

Q. Did you testify as to the distance that the "Halcyon" was towed? A. Yes, I think I did.

Q. Well, how far was she towed?

A. About six hundred feet.

(Deposition of J. F. Joseph.)

Q. That is, when the tow-line broke?

A. Yes.

Q. Now, in what direction did she proceed?

A. She seemed to me to proceed out this way.

Q. To the west of the buoy?

A. Yes, to the westward of the buoy. [68]

Q. And will you please indicate here about the position of the "Halcyon" at the time the tow-line broke?

A. (Witness indicates.) Might be about in here. I should judge it would be.

Q. Now, will you draw a little line there so as to indicate her position? A. (Witness draws.)

Mr. RUSSELL.—This will be indicated as "Halcyon-3."

Q. Now, from the position as you have just noted it, in what direction did the vessel drift?

A. She seemed to drift about this way.

Q. Then will you make some *dated* lines indicating the direction that she proceeded from "Halcyon-3"? A. (Witness draws.)

Q. And the end of the dotted line is the point—

A. She would be in that far. She was about in here. (Indicating.)

Q. About in there? A. Yes.

Q. Now, will you mark a little oval, draw a little oval as indicating the position, the location of the vessel at the time when the signal was hoisted?

A. (Indicates.)

Mr. RUSSELL.—It will be indicated as "Halcyon-4."

(Deposition of J. F. Joseph.)

Q. Do you mean that is the correct position?

A. That's the way I mean.

Q. From "Halcyon-2" to "Halcyon-3," did she proceed without being towed?

A. That I couldn't say because he partly towed and he partly heaved on.

Q. Do you recall the vessel "Enterprise" being anchored in the harbor? A. Yes.

Q. Now, will you indicate on the map here about where she was anchored. Do you recall?

A. (Indicates.)

Q. Will you draw the oval shape? (Witness draws.)

Mr. RUSSELL.—I will mark that "Enterprise."

Q. I will ask you if you recall whether you saw the "Enterprise" as she was anchored from any of the streets?

A. No, I take that position from how she appeared to me to lay.

Q. Now, how much of that tow-line did you have aboard the "Halcyon" [69] after it was parted?

A. Well, I should say about twenty-five or thirty fathoms.

Q. And how much of that line was used in tying her; that is, was used aboard the vessel?

A. Well, about fourteen feet.

Q. Now, you have mentioned the direction of the wind. Will you, up here, draw some lines indicating the direction of the wind?

A. (Witness draws.) That's the way the wind blew.

(Deposition of J. F. Joseph.)

Q. Now you are gauging it according to this compass; now irrespective of this compass, does that accord with your recollection?

A. Yes, the same exactly.

Q. Irrespective of the points of the compass I want you to mark the direction of the wind as you recall it. A. (Witness draws.)

Mr. WARREN.—Witness draws two arrows.

Mr. RUSSELL.—Q. And then the swells?

A. The swell.

Q. Yes.

Mr. WARREN.—Let the two arrows already drawn be marked "wind," please.

Mr. RUSSELL.—One arrow which is marked swells.

Q. Now, when you flared your lights, when you flashed your lights, the first time, how long elapsed before a line was given you?

A. Pretty near an hour.

Q. And I think I asked you if during that hour, did the vessel move? A. No, no, she was fast.

Q. Did you see the boat there, the small boat; that is, the life-boat, steamer's boat there before a boat came out there? A. Yes, I seen a boat.

Mr. WARREN.—First or second time.

Mr. RUSSELL.—First time.

A. I seen a boat but I didn't know whether it was the steamer's or whether it was the "Ka Moi's" boat.

Q. And there were some people in it?

A. There were some people in it. [70]

(Deposition of J. F. Joseph.)

A. There were people in it.

Q. Did you hear the captain say anything?

A. No, I didn't hear him say anything.

Q. Now, at the point where the flags were put up, the flag signals were put up, did you take any soundings? A. Yes, sir.

Q. And what did you determine?

A. Very near eighteen feet of water.

Q. And how many feet did the "Halcyon" draw?

A. The "Halcyon" at that time was probably drawing little over twelve.

Q. Did you strike bottom? A. No, sir.

Q. And you were towed from there where to?

A. We were towed out to a safe anchorage.

Q. And that was in the vicinity of where?

A. The "Enterprise" lay, yes.

Mr. RUSSELL.—That's all.

Cross-examination.

Mr. WARREN.—Q. During the first tow, what was the approximate distance between the steamer and the schooner?

A. It was about between six and seven hundred.

Q. What?

A. Probably about six hundred feet.

Q. And was that distance lessened by her heaving in on the line?

A. Yes, that distance got lessened when she was pulled in.

Q. After she had gotten it straight she started to pull? A. Yes.

(Deposition of J. F. Joseph.)

Q. How long a time was taken during that first tow until the line parted?

A. Well, we had gone from the time we got the line until it parted from us, say about an hour.

Q. And have you any idea of what time of the day it was, what time in the morning it was, that the line broke?

A. The line broke a little after six in the morning.

[71]

Q. And when that happened, did the schooner have any lines to any buoy?

A. No. That buoy that we had was gone.

Q. And then your anchor, your remaining anchor, was dropped?

A. Our remaining anchor was dropped, yes; the starboard anchor.

Q. How long did she lie there before she began to drift again?

A. Well, she seemed to lie there just only a little while, and there was a squall came along; she started to drift.

Q. When you dropped your anchor when the line parted, did you attempt to run any other line?

A. We didn't have any other line.

Q. What had become of the line?

A. As he kept towing us, we kept paying that out.

Q. Was any attempt made to get that line again?

A. The line had got foul down at the bottom, probably around the anchors.

Q. Tell us about that effort. Who did they, who tried it?

(Deposition of J. F. Joseph.)

A. It was one of the launches there. I don't know which one it was. Then other people tried to get the line, but that was after we had got out to safe anchorage.

Q. So that no effort was made to get a line to any buoy after it broke the first time?

A. We didn't have any line.

Q. How far were you from the buoy at that time?

A. We were about, well, I don't know, probably eight hundred feet; seven or eight hundred feet.

Q. And how long was your line?

A. That line I should judge was a full length; I think about 120 probably, 110 or 120 fathoms.

Q. Then did the steamer change her position at all between the first and second tows?

A. The "Niihau"?

Q. Yes. A. I don't think he did.

Q. Would you say that she did not, or you're not sure about it?

A. I'm not sure about it. After the tow-line was dropped I [72] didn't notice where he went until we was too busy aboard our own vessel.

Q. You don't mean, dropped the tow?

A. I mean, after the tow-line parted.

Q. And between that time and the time the lines were put on for the second time, you don't know whether the steamer moved at all?

A. No, but I know the second time he put the tow-line on us that he got his anchor up and came over.

Q. You say about an hour elapsed from the time of the flash till you had the line? A. Yes.

(Deposition of J. F. Joseph.)

Q. How did the steamer go about sending you that line?

A. Well, she dropped her anchors and ran out a small boat, one of the whale boats with a line.

Q. And when did Pilot Mosher come out?

A. He came out, but while he was on his way out, when the captain hoisted the distress signals out—

Q. Do you know whether he had gotten outside the creek *but* that time or not?

A. He was outside the mouth of the creek. He was headed over toward us.

Q. When you put the flags up?

A. Just about the time the captain was getting the flags up. It must have been him. There were so many launches out there. When he got the flags up, Captain Mosher was there. The first I seen him, that is, to recognize it as being him, he was alongside us, and he was broken down there.

Q. And it took him some time to get on board?

A. I think he let go his anchor. He must have let go his anchor.

Q. Where did his launch bring up when he arrived? A. Right astern of us.

Q. How far from the shore?

A. His launch wasn't a very long distance from the shore.

Q. Did you have your attention called at any time to a black object on the beach, near the water line, a boiler? [73] A. Yes, I seen that.

Q. Were you anywhere near that?

(Deposition of J. F. Joseph.)

A. No, she was headed, she was pointing in towards where that boiler was lying on the beach.

Q. Her stern was?

A. Not exactly her stern; her quarter.

Q. And her bow heading towards where?

A. Her bow was heading towards Hilo mill, sugar mill.

Q. The two lines you put on the second tow remained on until you had gotten out to a clear place?

A. Yes.

Q. And was there any stopping in the work of towing after the tow-lines had been made fast until you got out there?

A. No, they seemed to walk right along with her.

Q. Heaving on the chains first?

A. He had to heave his anchors up first.

Q. Before heaving up the anchors he heaved on his chains? A. That I couldn't say.

Q. First he got one line fast and then the second?

A. Yes.

Q. And do you know anything of any conversation or signals that occurred between the two vessels during the towing out that she should get out to a safe place? A. Not that I can remember.

Q. When did you let go your anchor?

A. I let go the anchor when Captain Mosher told me to.

Q. Was any signal made to the steamer to stop towing? A. That I couldn't say.

Q. You just got the order to let go and you did so?

A. I let go.

(Deposition of J. F. Joseph.)

Q. Then what did Captain Mosher and Captain Olson do?

A. They held a private consultation. Whatever it was I don't know.

Q. Then what did they do?

A. Then they got in, I think, Captain Mosher's launch and they went over to the steamer.

Q. Then what was done?

A. One of the lines, the steamer's heavy line, remained fast to the foremast all that day and all that night. [74]

Q. Did the steamer change her position after Captain Olson and Captain Mosher went away in the launch? Did the steamer change her position?

A. I think he did, yes.

Q. The lines were disconnected temporarily?

A. No, but I think he did change his position.

Q. And then you remained to next morning?

A. Next morning.

Q. Do you know whether Captain Olson went ashore at all that day?

A. That I couldn't say. I'm not sure.

Mr. WARREN.—That's all.

Deposition of Nels Piersen, for Libellee.

Direct examination of NELS PIERSEN, a witness on behalf of libellee, called and sworn.

Mr. RUSSELL.—Q. Mr. Piersen, you were a member of the crew of the "Halcyon"?

A. Yes.

Q. And you came in with the "Halcyon" on the 9th or tenth of January into Hilo harbor?

(Deposition of Nels Piersen.)

A. Yes.

Q. Do you remember the night of the 13th, when she lost her moorings? A. Yes.

Q. On the 12th. About what time was it?

A. The first time it was about nine o'clock. May have been a few minutes before or may have been a few minutes after.

Q. After she broke away what occurred? What was done?

A. Well, we let go the other anchor and we hauled taut the lines, the offshore lines to the buoy.

Q. Then you remained there until about what time?

A. About half-past two or three o'clock. Somewheres around there.

Q. And then what happened?

A. Well, then we ran another line out to the buoy.

Q. And that was about half-past two or three, you say? A. Yes.

Q. Do you remember any schooners being around?

A. Yes, the "Ka Moi." [75]

Q. Some lights? A. Had some lights there.

Q. Was that before or after she was tied to the buoy; before or after you ran that line to the buoy?

A. Well, I think that was just about the same time.

Q. Which was done first?

A. Well, we start in with the line first before she seemed to be in trouble.

Q. Then what happened afterwards? Did somebody come with a tow-line?

(Deposition of Nels Piersen.)

A. I seen a boat pass coming out of the channel there and there was somebody speaking; whoever it was I don't know.

Q. Speaking to who? A. To the boat.

Q. Did you hear the captain speak to him?

A. I couldn't say for sure because he was forward, or wherever it was, it was pretty hard.

Q. And then later on someone came with a tow-line? A. Yes.

Q. How long after the lights were alongside was it that they came with the tow-line?

A. That may have been about an hour.

Q. Now, during that hour, did the vessel move at all?

A. No. Well, she moved, yes, but she didn't drag in towards the beach.

Q. How much did she move?

A. That's mighty hard telling.

Q. Did she move away from the buoy?

A. Yes, she moved away from the buoy. She ran over the side towards them boilers.

Q. What is your best judgment as to the distance that she moved?

A. Oh, probably a couple of hundred feet.

Q. Do you recall whether she was around the two hundred or not? A. No, I didn't take any notice.

Q. And then do you remember when the tow, when it tightened up on the tow-line? A. Yes.

Q. What was done?

A. We was starting to heave in our anchors.

Q. And what anchors were heaved in? [76]

(Deposition of Nels Piersen.)

A. Starboard anchor.

Q. And around to the other anchor?

A. That carried away when we started to heave on it.

Q. What was done with reference to the line of the tow. What happened, if anything happened, to the tow-line? A. The tow-line carried away.

Q. And how long had you been towing when that happened? A. About half an hour, I guess.

Q. I mean the distance?

A. Oh, about one hundred and fifty to two hundred feet, I guess. Of course, I couldn't say for sure exactly.

Q. This line to the buoy that you had and that you were slacking up, had you gone the length of that line? A. Yes, I didn't have no more.

Q. And then what was done after you lost the tow-line? What was done?

A. Then we dropped our anchor.

Q. This was about what time?

A. That must have been about half-past six or something like that.

Q. Half-past six that you dropped the anchor?

A. Seven o'clock. I don't know exactly the time.

Q. Do you know what happened to that tow-line?

A. No, I do not.

Q. Did you see any part of that line on the vessel?

A. I saw the end after we hauled it in.

Q. And about how long a line did you have?

A. Oh, about I should judge, twenty-five fathoms.

Q. And then after you got out your anchor did

(Deposition of Nels Piersen.)

you hold there or did you drift?

A. No, we start to drift pretty near right off.

Q. How long?

A. At least five minutes or ten minutes, afterwards we noticed she start to drift.

Q. And then do you remember when the flags were hoisted? A. Yes. [77]

Q. About how near to the shore were you?

A. Oh about couple of hundred feet; or may have been more.

Q. Did you strike? A. No.

Mr. RUSSELL.—That's all.

Mr. WARREN.—No questions.

Monday, February 2, 1914.

Deposition of Wm. Clover, for Libellee.

Direct examination of WM. CLOVER, a witness on behalf of libellee, called and sworn.

Mr. RUSSELL.—Q. What is your full name?

A. William Clover.

Q. You are a member of the crew of the "Halcyon"? A. Yes, sir.

Q. And you came in with the "Halcyon" in Hilo harbor the early part of last month? A. Yes, sir.

Q. Now, do you recall docking at the wharf, the railroad wharf in Hilo harbor? A. Yes, sir.

Q. Do you remember the night of the 12th of January, when you broke loose from the moorings?

A. Yes, sir.

Q. Now, will you tell about what time was this when you broke loose?

(Deposition of Wm. Clover.)

A. When we broke loose? Between eight and nine o'clock.

Q. Now, on which side of the wharf were you moored?

A. We were moored on the left-hand side of the wharf.

Q. That is, on the Hilo side?

A. That is on the Hilo side, yes. [78]

Q. And will you state just what happened at the time? A. Yes.

Q. Well, I'll withdraw that. In what manner were you tied?

A. We were tied with the head-line, stern-line, and our own line. We had two stern-lines out; we had two breast-lines out, and an anchor down.

Q. Now, you were tied on one side of the wharf, and how on the other side?

A. On the other side we had nothing.

Q. What is that? A. On the Hilo side?

Q. Yes.

A. We had two breast-lines, and two buoys; one forward and one aft.

Q. Will you state what occurred when you broke away?

A. When we broke away from the wharf, first the head-line carried away.

Q. The head-line to the wharf?

A. The head-line to the wharf carried away.

Q. Yes.

A. Then we called out the crew and we let go the

(Deposition of Wm. Clover.)

starboard anchor; then after that, at the same time we let go the starboard anchor, we started to drift down to that little schooner there.

Q. The "Ka Moi"?

A. Yes. And we had a little trouble for to get clear of her, and then we hauled taut to the stern breast so we got clear of her, and that way we lay to, I ain't quite sure, three o'clock in the morning; something like that.

Q. Then what did you do?

A. Then the wind was breezing up some. The captain called us up. He said we had to get a line and a line to the buoy; so we stood here so I went in a boat with two men and ran a line to the buoy, a six-inch line we got that at the time. When I come back to the boat we lost the port anchor.

Q. Now, how long a line was that that you—

A. That I ran?

Q. Yes.

A. Well, I couldn't tell exactly, the length of the hawser. It's a new coil of rope. [79]

Q. What's that?

A. That was a new line. I think the line only was used once; something like that.

Q. That was what line?

A. What ran to the buoy. I guess the captain knew the length of the line.

Q. What's your best recollection?

A. Well, I couldn't give you no length of that line, but it's a full length line. I can't give now exact length to it.

(Deposition of Wm. Clover.)

Q. Then when you came back to your boat as you say, what happened then?

A. When we went in the boat we had a head sea and went against us to get to the buoy, so I couldn't tell exactly how long we were running that line because we missed the buoy once; we had to go back to her again to try to work our way from the buoy.

Q. When you were out to extend the line to the buoy, how many anchors were down?

A. We had two anchors down.

Q. Now, when you got back to your boat, what was done?

A. When we got back to the boat and I come out to the boat and went forward we was going to heave in some on the anchor and I went try and I see that it was snapped. I didn't hear it. One anchor carried away.

Q. And the anchor carried away or snapped you say while you were trying to heave them in?

A. You see, the anchor was gone when I got aboard.

Q. When you got aboard?

A. When I got alongside the vessel and I was told that the anchor just went.

Q. And was that when you were extending a line to a buoy? A. The line was fast.

Q. The line was already fast?

A. The line was fast and she was hove taut.

Q. Do you recall the lights being flashed?

A. Yes, sir.

Q. Now, with reference to that time when did the anchor loosen or break or drag? Was it before or

(Deposition of Wm. Clover.)

after the lights were flashed? [80]

A. After the line was fast to the boat and we give her little more chain on them, that is the starboard anchor—

Q. Now, when was it that the lights were flashed?

A. The lights were flashed, the captain was flashing the lights then. In fact, quite awhile.

Q. And now did he flash the lights before or after you tied the boat to the buoy?

A. I believe the captain flashed it both before and after.

Q. You say he flashed the lights before and after?

A. I believe so; I ain't quite positive sure.

Q. Well now, with reference to the anchor breaking, the anchor chain breaking or the anchor dragging. Do you know whether that was before or after the lights were flashed?

A. Well, if they had been before, then it should have been before the lights were put out, then the captain must have flashed the light before.

Q. I'm asking you, Mr. Clover, as to your recollection.

A. Now I remember it was the light she flashed before the line was put out, I'm sure.

Q. And about how long before?

A. Now, it's hard to tell in a guess like that exactly how long it is. Maybe ten or fifteen minutes. Something like that.

Q. Well now, when you got back to your vessel, what happened then?

(Deposition of Wm. Clover.)

Mr. WARREN.—Is this before or after he got back?

Mr. RUSSELL.—I say after he got back, after the lights were flashed.

A. After I got back to the vessel the steamer came down and gave us the line.

Mr. WARREN.—I object to the question as ambiguous.

The COURT.—Of course, we want to get it as clear as possible.

Q. You say the lights were flashed before you got back to the ship and also after you got back?

A. Yes.

The COURT.—Twice. Now what were you asking about? [81]

Mr. RUSSELL.—Now I'm asking him, after he got back on the vessel and after the lights had been flashed.

The COURT.—The second time?

Mr. RUSSELL.—Well, after the lights were flashed, what occurred?

Mr. WARREN.—I object to that unless he specifies which time.

The COURT.—Yes, I think the objection is right.

Q. Now, the lights were flashed when you were out fixing that line. When you came back to the ship then they were flashed again, were they?

A. When we came back to the ship, I don't recollect the captain flashing the lights. I think that was done before I put the line out.

(Deposition of Wm. Clover.)

Q. State what occurred after you got aboard the vessel.

A. After I got aboard of the vessel we went forward.

Q. Do you recall whether anything occurred with reference to either of the anchors after you got back on your vessel?

A. No, there was nothing occurred to our anchor then; we had lost the port anchor. We had the starboard anchor and the line; that's all we had.

Q. Did you take part in the heaving of the anchors? A. Yes, sir.

Q. Which one? A. The starboard anchor.

Q. And that was heaved up all right? Was that heaved up?

A. We didn't heave up the starboard anchor before the steamer had hold of her.

Q. Well, then, go on and state from that time on what occurred?

A. Then we had this line to the buoy. The steamer put the line aboard us. She dropped her two anchors first. She sent a line down to us. We made it fast around the mast, the foremast.

Q. How long a time elapsed from the time that you tied the vessel to the buoy, that is, ran out this line, until the line was brought to you from the steamer?

A. Well, that couldn't have been,—when you're working like that you don't imagine the time, so I [82] couldn't give you exactly the time.

Q. What is your best judgment?

The COURT.—They don't want the exact time, but

(Deposition of Wm. Clover.)

they want the approximate time, generally. About how long a time?

A. I don't want to state nothing what I ain't sure of, either.

Mr. RUSSELL.—Surely. What is your best judgment of the time? In your judgment was it less or was it more than half an hour?

A. I should judge it was something around a half an hour.

Q. Now, during that time, was the "Halcyon" fast to the buoy with this line that you had taken out there?

A. She was fast, I'm sure, to the buoy and the anchor, because I had a line from the stern and seen if she was dragging and she wasn't; and furthermore, if she had dragged, she would sure have carried away our line or dragged that mooring buoy. She didn't.

Q. She didn't?

A. No, the buoy is laying in the same place it was before.

Q. And then? What then? Go on and tell what occurred after you tied the line that had been given to you by the steam vessel?

A. Then the steamer give us the line and she was laying, heaving it tight; first she had her anchors out. I couldn't tell you what time it was either, and she started to tow; at last she started to tow and I was slacking away that line pretty hard to the buoy till I got to the end.

(Deposition of Wm. Clover.)

Q. To the what?

A. To the end of the line.

Q. What was done, if anything, about the starboard anchor?

A. The starboard anchor was heaved up, then taken underneath the hawse pipe.

Q. Did you tend to that yourself?

A. I tended to the line.

Q. And do you recall whether at that time anything was done with reference to the port anchor?

A. The port anchor we didn't have aboard.

Q. Was anything done with reference to the port anchor chain? [83] Anything at that time after the steam vessel had given you the line?

A. We couldn't do nothing to the port anchor chain, it was gone. What we had left it was on the deck.

Q. Well, go ahead now; continue.

A. He towed us up on the left-hand side towards the wharf till we got to the end of the line, then I asked the mate what we are going to do. I was slacking all the time. As long as he towed I was giving out, so there was no strain on the line, and I got to the end. The mate said "You can't do nothing"; the mate said, "Let go"; little after that, it couldn't have been long, the hawser snapped.

Q. About how long?

A. I don't think it could have been more than fifteen minutes; something like that.

Q. How long do you think you had been towed?

(Deposition of Wm. Clover.)

How long do you think you had been towed when the towing-line broke?

Mr. WARNER.—In time?

Mr. RUSSELL.—No, in point of distance.

A. Distance?

Q. Yes.

A. I reckon about eight hundred feet.

Q. And then what occurred?

A. As soon as we seen the towing-line snapped we let go the starboard anchor what we had left. That's the only thing we had.

Q. And did she hold?

A. Then she seems to hold a spell and then after that she again start to drag her again over towards the beach on the shore-side of the creek there.

Q. And how far away were you from the shore, if you remember, when the flags were put up?

A. The flags? Close to somewheres around two hundred feet; maybe not two hundred feet.

Q. Well, after the flags were put up, what happened?

A. The steamer come down just as the flags went up, the steamer was down with another line.

Q. What did the steamer do?

A. The steamer anchored ahead of us and she took the boat, the boat went on with a line and went down towards our bow.

Q. After the flags were up how long did it take?
[84]

A. I don't think the flags was just about flying

(Deposition of Wm. Clover.)

when the steamer was down with his line again.

Q. And how many lines were you given?

A. We got first one and then the second. We had two lines to her.

Q. That is, the steamboat didn't carry the two lines?

A. The steamboat ran one first and then he ran the second one.

Q. Do you know in what direction the wind was at that time? A. Now, he should have known it.

Mr. RUSSELL.—Never mind, I'll withdraw that. All right, Mr. Warren.

Cross-examination.

Mr. WARREN.—Q. Did I understand that when the schooner was moored to the wharf that evening before you broke away, you had two breast-lines to the wharf? Did you?

A. We had first one, and one we was working lumber that whole day and at five o'clock and we knocked off the lumber and we could see then it was breezing up so we breasted off from the wharf and we heaved it out six or eight feet from the wharf and the lines we have one forward and one aft.

Q. You had the port anchor out?

A. Port anchor out.

Q. Starboard anchor was still up?

A. The starboard anchor was up underneath the hawse-pipe.

Q. You say along about after you had broken away the first time and collided with that schooner, you

(Deposition of Wm. Clover.)

did collide with the schooner? A. Yes.

Q. And then you got fast again and were lying away out from the wharf?

A. Our line what we ran was run to the buoy that was away from the wharf. We drifted down towards this schooner underneath her gib-boom and then we hauled her off astern and we proceed to the schooner; the schooner was near to the wharf and we were proceeding to her.

Q. You had a breast-line on the shore side on the stern?

A. We had a breast-line on the stern; that's what we hauled her [85] off with.

Q. That was the offshore breast-line?

A. That was the stern offshore breast.

Q. And then the stern breast-line to the wharf, you didn't have that?

A. No, that gives all the stern-lines.

Q. Then I understood you to say when you were engaged in running a new line to the buoy, this new six-inch line, and that after you made that fast to the buoy and had got back and were in a boat alongside when they told you that the port anchor had broken away?

A. When I came aboard again I was told then, it may have been Mr. Piersen, he said our port anchor just went.

Q. That was a few minutes after you had gotten out of your boat and had gotten on board again?

A. Yes.

(Deposition of Wm. Clover.)

Q. How long did it take to get that new line run to the buoy; that six-inch line?

A. I'm pretty sure there was more than half an hour.

Q. It was only a short distance from the schooner, was it not?

A. Yes, but the wind was pretty strong and we had to pull to get to the buoy; it might have been half an hour. In the meantime we were in the boat and got this line fast; they got the line over her stern and it was fast forward; when we got back they were hauling that taut.

Q. As you left the schooner to take that line to the buoy, how was the wind blowing in regard to you, were you ahead of the wind or heading in the wind?

A. We had the wind about the beam. We had to pull across the wind.

Q. Across the wind? A. Yes.

Q. And how long did it take you to get hold of the buoy after you got there?

A. We got there, it took a half an hour to get the line fast to the buoy from the time we left the ship and got the line secure.

Q. Was it what you'd call "run way" in there?

A. It's pretty heavy.

Q. And was the sea the direction of the swells?
[86]

A. Well, the sea was running inshore right the same way as the vessel was lying.

Q. And that six-inch line you say was a full coil?

(Deposition of Wm. Clover.)

A. Full coil-line.

Q. Do you know how many fathoms there are in a full coil?

A. There is different length in a coil. There's some bigger and some smaller. That's the reason I couldn't say.

Q. In a six-inch line there are different lengths?

A. You mean a different length of line.

Q. From your judgment, could you say whether that would be one of the larger or smaller coils?

A. It should have been one of the— Could I ask the captain a question?

Q. No, it is just what you can remember. You handled the line and you also had hold of it as you were paying it out as the steamer was towing you. You don't remember what the length of the line was at all? You couldn't say?

A. It seems to me that line, that's somewheres around 400 feet.

Q. What kind of lights were flashed? Describe the manner in which you gave flashes.

A. Flash lights that we used aboard any vessel; flare-up lights.

Q. Flare-up lights? A. Flare-up lights.

Q. How many times *what done* before you went out in the boat with that new line?

A. I can't tell for sure, but it was done a couple of times to my knowledge. I know the captain flared up a couple of times. I never kept no tally.

Q. How long was that after you had had the en-

(Deposition of Wm. Clover.)

counter with the small schooner?

A. That was between, we was clear of the schooner about ten o'clock, something like that, and we were clear of the schooner.

Q. So these flare-lights were not sent up until about three o'clock, more or less?

A. Yes. Before three o'clock.

Q. Then the flare-lights were sent up before you went out with that line?

A. I think that was before. [87]

Q. That's your best recollection now? A. Yes.

Q. And after you got back you say it was perhaps a half an hour until the steamer line was put aboard?

A. Yes.

Q. Did you? A. Yes.

Q. How long after was it, after you got back, before those flashes, the second flash, if there was a second flash?

A. After I got back, I can't recollect, the captain putting up no flashes; I don't know if he done it twice; more than once.

Q. Were you on board, on deck, all the time after you got back? A. I was aboard all the time.

Q. On deck?

A. On deck. I was on deck all night.

Q. Have you any knowledge of how it happened that the steamer sent a line to the vessel? How did that come about?

A. Well, first when the steamer come down with that, he was going first for that little schooner and

(Deposition of Wm. Clover.)

he come to drop his anchors ahead of us. Before I went on the boat with a line, there was a boat went aboard of the steamer.

Q. Went about the steamer?

A. Supposed to be the purser's boat the captain said afterwards.

Q. That boat that went about the steamer, that come anywhere near the schooner?

A. He was coming away on the side of it and it never came near it and we reported to the captain that he passed the schooner.

Q. Were you on deck of the schooner before you went out with a line to the buoy? Were you on deck a part of the time?

A. I was on deck most of the time; I was down in the cabin for ten or fifteen minutes then I was on deck looking around.

Q. You yourself see anything of that steamer's boat when it passed?

A. It was a dark night. I heard the captain holler to the boat; that must have been little before he called the crew again.

Q. You heard the captain holler to this small boat?
[88]

A. To this small boat, yes.

Q. And heard what he said?

Q. Oh, he asked something about running a line for him.

Q. Did you hear the answer?

A. No, couldn't hear the answer.

(Deposition of Wm. Clover.)

Q. And how long was that before the steamer line came on later?

A. Then after we had to run our line ourself and got back to the vessel and then the steamer came down and dropped his anchors and run the line.

Q. Do you know where the steamer had been lying before that?

A. Yes, she laid, there's the steamer "Enterprise" lying and she lying right close towards her.

Q. Did you see the steamer "Niihau" make her first move, leave her anchorage and come toward you or did you see her after she was down over to the "Ka Moi"?

A. She come in towards the wharf there and she dropped her anchors there.

Q. Is that the first time you noticed her?

A. That's the first time I know she was moving; we were talking about it and we said she will take the little schooner away from there maybe.

Q. How did she come in, bow first or was she backing in stern first?

A. She coming bow first, I should judge and dropped her anchors.

Q. Did you see her come in?

A. It was a dark night.

Q. Couldn't you tell from the lights on the vessel whether she was coming bow first or stern first?

A. I think she come bow first and dropped her anchors and then down towards us and then run her lines on board the vessel.

(Deposition of Wm. Clover.)

Q. The first time you noticed her that night where was she? In the place where she dropped her anchor or was she just lying out by the "Enterprise"?

A. When she started away she was lying by the "Enterprise"; she must have left her anchor.

Q. You didn't notice that?

A. No. She was on her way in when I saw her first. [89]

Q. Was she anywhere near the "Ka Moi" when you saw her first?

A. She was ahead of the "Ka Moi."

Q. And then after she dropped the anchors she paid out chain and swung down to you?

A. Towards us.

Q. And then let out a boat with a surf-line?

A. Let go a surf boat to take the end of the line in the boat.

Q. Now, how far. Do you know where the piles are in that neighborhood there, right off Waiakea stream? A. Beg your pardon?

Q. Do you know where the fresh water stream is?

A. Yes.

Q. Do you know the piles just on the edge of that?

A. On the edge of the wharf? Yes.

Q. How far from those piles was the schooner when the steamer's line was taken aboard?

A. We had them a little bit on the port quarter. I believe if she would have drifted in over there she would have drifted into the creek there.

Q. About how far from the piles was the stern of your schooner.

(Deposition of Wm. Clover.)

A. Somewheres around 150 or 200 feet.

Q. And how far from the shore on the other side?

A. From them rocks, you mean?

Q. Yes, from the rocks on the side?

A. I reckon the same distances.

Q. About the same distance? A. Yes.

Q. And were you drifting at that time?

A. No, we wasn't drifting after the anchor and the line was to the buoy.

Q. Was there any change in the wind after that; in the strength of the wind, I mean?

A. No, there was no change but it looks to get worse or something like that.

Q. Now, can you tell us about how long a time the steamer was towing until the line parted?

A. I couldn't give you the exact time.

Q. Well, just as nearly as you can; whether it would be nearer [90] five minutes or quarter of an hour?

A. It would be somewhere near a half an hour, I should judge.

Q. Possibly half an hour? A. Yes.

Q. And where were you when the line broke?

A. I was in the fore part, the after part of the foremast.

Q. Did you see the line break right at the moment it broke?

A. I didn't see the line break, but I heard it break.

Q. And do you know where it broke?

A. It broke thirty fathoms or maybe thirty-five

(Deposition of Wm. Clover.)

fathoms away from us.

Q. That would be thirty-five fathoms in addition to the line you had on board?

A. I mean that she would break at least twenty-five fathoms outside the ship.

Q. Did you see the broken end?

A. I seen the end broken.

Q. After you pulled it on board?

A. After we pulled it on board.

Q. What did it look like?

A. It was fagged out; it looks like it simply parted, carried away any other ordinary line carries away.

Q. Just when that line broke, that's the time you dropped your starboard anchor?

A. Dropped the starboard anchor and she seemed to hold for a spell.

Q. What do you mean by that? About how long?

A. I mean that she held for twenty minutes; something similar, like that and then she started easy, very slowly to drift over toward the beach.

Q. But in your judgment you don't think she began to drift again until about half an hour?

A. Well, I don't believe there was a half an hour; twenty minutes, or something like that.

Q. From twenty to thirty minutes? A. Yes.

Q. Then she began easy?

A. She began easy to drag. [91]

Q. And at that time you had holding her simply your starboard anchor?

A. Only the starboard anchor.

Q. How much chain did you have out?

(Deposition of Wm. Clover.)

A. We had—

Q. If you don't know, just say so, but if you think you do, just give us your best judgment.

A. Well, I couldn't tell exactly what chain was out. In her we got one cable of chain, thirty fathoms; there's no fifteen fathom shackle to it; there's a shackle of thirty fathoms.

Q. You think it may have been fifteen fathoms?

A. There is no fifteen fathom shackle. There is one at the end of thirty fathom.

Q. When the steamer had put her line on, you hove up that anchor did you not?

A. As soon as the steamer put her line on we made that line fast and he got that tight and we see that they started then, we hove up the anchor.

Q. Did you heave it clean up, right up to the bow?

A. Hove it right up to the bow.

Q. And having *down* that, how did you fix the anchor there? Did you make it fast after you had it up?

A. We had it running to the windlass ready to let go again.

Q. Did you have the chain so arranged that you could let go of the chain and run it out or did you have it locked?

A. This is an old-fashioned windlass; it is not one of these windlasses like you got, iron windlass. There is a windlass in this vessel and we threw the chain over the windlass with about three turns over the windlass. If you're going to arrange the chain over then you have to hold the anchor and get it up in

(Deposition of Wm. Clover.)

the way so you can drop it. We had it hanging to the hawse-pipe and as soon as the hawser parted we let go; that means it would not take two minutes to go to the bottom by throwing it over the windlass.

Q. You had out more than six or eight fathoms of chain when you threw it over after the line broke?

[92]

A. I should judge there was all of that.

Q. All of that? A. More than that.

Q. How much more, do you think?

A. Towards fifteen fathoms anyhow.

Q. Towards fifteen fathoms? A. Yes.

Q. After that line had parted and you had dropped the anchor, was any effort made to get a line to a buoy so as to hold yourself with more than one anchor?

A. We had no more lines.

Q. Did you endeavor in any way to get a line from any other place?

A. We couldn't get no communications anywheres to get a line there. We couldn't try to get out, there was no boat around to try and take up her line. We couldn't get out there in such weather as that in order to pick up the line.

Q. You mean the weather was too strong for you to go out and pick up your own line? A. Yes.

Q. Then the line you had fastened, you had to let go? A. Yes.

Q. Were there any launches or small boats around that morning when that line dropped? A. No.

Q. Within fifteen minutes afterwards, half an hour afterwards.

(Deposition of Wm. Clover.)

A. I didn't see none. I didn't see none until we got toward the breakers then there was two or three launches come out; the pilot come out.

Q. You say you got possibly two hundred feet from the shore. Do you mean from the breakers or from the shore line, the sand beach?

A. On the sand beach; we were somewheres around that; we were outside of the main breakers.

Q. The main breakers, the second one nearer the shore?

A. Yes; that's the one that breaks right ashore.

Q. Did you notice on the beach there a black object?

A. If we had drifted in we would have struck right into that.

Q. How long had you been drifting that second time until you put up the signal flags?

Mr. RUSSELL.—The second time? [93]

Mr. WARREN.—The second time, after the line had broken and you began dragging your anchor toward the beach, how long was it from the time you began to drag until the signal flag went up?

A. I should judge about two hours and a half; something like that.

Q. Then you were taking about two hours and a half dragging?

A. Dragging, yes, until we put up the schooner.

Q. When you put up the signal flags, that was the time you were approximately two hundred feet from the sand? A. Yes.

Q. And did you notice whether this steamer, "Nii-

(Deposition of Wm. Clover.)

hau" made any move while you were drifting in before she sent her small boat with the line again?

A. No, I didn't notice the "Niihau" making no move but she came right away to us.

Q. When you saw the small boat coming with the line the second time, where was that boat; near the steamer or nearer your vessel.

Q. The boat, I don't think, had left the vessel when our flags went up.

Q. How far was the steamer away from the "Halcyon" when the boat left her?

A. That's hard to tell the length on water. She was a good ship's length away, I guess.

Q. You really didn't notice the steamer very much until that boat left her with the steamer line, is that it?

A. Well, we were forward; the captain called me and tried to get the signals out and then we got the signals out and they hoisted.

Q. And after the steamer had put on one line, you say she ran a second line?

A. After the steamer got one line aboard, the captain called me aft to the wheel; he says to go aft and steer; he says to watch out aft so that I wasn't forward when he put on the second line.

Q. But you saw later that two lines had been made fast? A. Made fast, yes.

Q. When those two lines were made fast, do you know what the steamer did?

A. The steamer was first heaving tight to this line and held us to an anchorage there; she held us [94]

(Deposition of Wm. Clover.)

quite a spell before she started to tow.

Q. And after she started to tow, where did she take you? A. She took us out just near the "Helene."

Q. The "Enterprise," you mean?

A. The "Enterprise," I mean, and we let go anchor there.

Q. Where were you when the anchor was let go that time?

A. When the anchor was let go I was at the wheel.

A. After that what happened to these lines to the steamer?

A. We let go the steamer's line and the steamer had one line aboard us that whole day and night.

Q. And the next morning?

A. And the next morning.

Mr. WARREN.—That's all.

Redirect Examination.

Mr. RUSSELL.—Q. You say that you saw this tow-line when it was taken in aboard the vessel after it broke. Do you know how long that was?

A. The tow-line was?

Q. Just the broken part?

A. The broken part? It should be all of thirty fathoms.

Mr. RUSSELL.—That's all.

Mr. WARREN.—Q. Do you know what became of that piece of that tow-line afterwards?

A. The next day the captain went ashore and I was on deck; we was clearing up the broken ropes and things and the mate was aft in the cabin and the captain of the steamer come alongside and asked for

(Deposition of Wm. Clover.)

this line. I said, "All right, I'll go and see the mate." And when I got the mate, the mate said, "All right give him the line," and so he come on deck.

Q. You gave him the line?

A. We gave him the line. He pulled it in the boat and took it on the steamer.

Tuesday, February 3, 1914.

Deposition of J. A. T. Olson for Libellee.

Direct examination of J. A. T. OLSON, a witness on behalf of Libellee, called and sworn. [95]

Mr. RUSSELL.—Q. Your name is J. A. T. Olson?

A. Yes, sir.

Q. And you are master of the schooner "Halcyon"? A. Yes, sir.

Q. And you were master during the entire month of January last and brought the "Halcyon" into the Hilo harbor? A. The 9th of January, sir.

Q. And you brought your vessel to the railroad wharf?

A. The harbor-master brought her.

Q. What's that?

A. It was brought by the harbor-master.

Q. And on the Hilo side of the railway wharf?

A. Yes.

Q. On the evening of January 12th the vessel broke from its moorings?

A. Yes, about nine o'clock; little before or after.

Q. And you had the vessel tied in what manner?

A. She was tied with the port anchor out and the head-line and stern-line to the wharf and had two

(Deposition of J. A. T. Olson.)

breast-lines, one forward and one aft.

Q. To one buoy or two different buoys?

A. Two different buoys.

Q. What occurred when you broke away from the wharf?

A. When we carried away the head-line and we drifted astern until we touched the little schooner then we breasted her with the offshore breast-line and we dropped the starboard anchor at the same time.

Q. And did that hold the vessel then?

A. Well, she seems to hold a little while, yes; and we were clear of the schooner. About three o'clock in the morning I thought it would be best to run a line so I brought all hands out and I got a six-inch line to the buoy.

Q. When you strung your line out to the buoy, how far were you [96] from the wharf?

A. Oh, I was about a couple of hundred feet, I think.

Q. What's that?

A. About a couple hundred feet; about 150 to 200 away from the wharf, and I was just about abreast of the little schooner.

Q. And about how far?

A. I was about a ship's length.

Q. When you ran your line to this buoy as you said, about three o'clock in the morning, what other lines were out?

A. I had the other lines out to the buoy, but one carried away; the stern line carried away at the same time, just about the same time.

(Deposition of J. A. T. Olson.)

Q. So that when you ran your line out to the buoy you were being held by but one line?

A. And the two anchors down.

Q. This you say, as near as you can recall, was about three o'clock in the morning?

A. Yes, when I ran that line.

Q. Then what occurred?

A. Well, I hove that line taut and she seems to lay there all right and towards morning I thought in case I was showing in or anything like that I'd better get away from there, so about morning, about four or five o'clock, I couldn't exactly tell, I tried to call the attention of the steamer or some boat,—I didn't think necessarily the steamer,—so I used the torchlight, flashed up the torchlight.

Q. This was at what time?

A. This was in the morning very nearly towards daybreak; somewhere around four or five o'clock.

Q. How long after you ran your line to the buoy?

A. It was over an hour.

Q. And during that hour what was the position of the vessel; that is, did she move at all?

A. No, she didn't; she couldn't move in any case, she would have parted my line to the buoy or else drag the buoy and I can't see any difference in the position of the buoy now so she couldn't have dragged anything then; and she was just about abreast right from the little schooner. I didn't have much line out when I was [97] fast to the buoy. I don't think I had a quarter of that big line and I didn't have half of it, I'm sure.

(Deposition of J. A. T. Olson.)

Q. Did you have both your anchors out?

A. Both anchors, yes.

Q. Now, when you flashed your signal did you receive any response?

A. No, I didn't. I spoke a boat, I couldn't tell just exactly the time; I can't remember exactly the time, I spoke a boat what was pulling out, going out from the creek. I don't know whose boat it were. It was a rowingboat. Anyhow I tried to call that boat's attention. I sung out to him to run me a line. I believe that is the word I said. I don't know if he heard me or not.

Q. How far away was this boat?

A. He was quite a distance out, but past me on the starboard side.

Q. You shouted?

A. My intention was for him to come closer so I could tell him what I wanted, but he didn't come close enough.

Q. Did you hear any persons in this boat?

A. They were saying something in Kanaka, I don't know what he was saying.

Q. But you did hear some voices?

A. I did hear some voices, but what he said I couldn't tell.

Q. What occurred afterwards?

A. Afterwards, daylight; somewheres around six o'clock, I believe, somewhere around six o'clock, five or six o'clock, I saw the steamer anchored; was making some preparations. I thought first she was going for that little schooner to tow her away from the

(Deposition of J. A. T. Olson.)

wharf. I seen him after a while drop the anchor and he sent a line.

Q. How long after you flashed your signals was it that you received this line?

A. That was pretty near two hours or hour and a half. I couldn't tell the exact time.

Q. What is your best judgment of the shortest time?

A. Well, I couldn't say exactly the time it was; I don't know exactly [98] the time.

Q. Was it more than half an hour?

A. Oh, yes, there was more than half an hour; I believe there was.

Q. Do you think it was nearer an hour?

A. Just was daylight I flashed the lights so I guess it was over an hour.

Q. Then what was done?

A. Well, he sent a boat down with a line, a six-inch line, and I made that line fast to the foremast because I had my other line fast to the bit and I wouldn't let go that line before he had strain on the tow-line.

Q. What did you do, if anything, with reference to anchors?

Q. Then when we got the line taut I commenced to heave my anchors out. As soon as I commenced to heave the port anchor chain snapped exactly on the windlass. I got the length on board the ship.

Q. What did you do with the starboard anchor?

A. I heaved it in the hawse-pipe. As soon as I got my anchor up he commenced towing me out. There was nobody around the buoy to let go my line. I paid

(Deposition of J. A. T. Olson.)

out my line to the end. There was a boat there. Just as I had the end, I sung out to them, "Hold on to the line so I don't lose it, I got to slip it."

Q. Then what occurred?

A. Just about a little time, I don't think it was more than five minutes after I slipped the line, then the tow carried away.

Q. How long after the line to the buoy was run out was it that these signals were flashed.

Mr. WARREN.—That's not in accordance with the testimony.

Q. When was it with reference to the time that the line was run out to the buoy that you flashed your lights?

A. I flashed the lights, after I had run the line out.

Q. How long after?

A. Oh, that was sometime after. I didn't look at my watch that time; it was somewheres around there, about a half hour or hour; it was about three o'clock we ran the line; between four and five I flashed the lights.

Q. You say it was around three o'clock when you ran your line to the [99] buoy and you flashed your lights between four and five?

A. Yes, something like that.

Q. How long after you had let the entire line out, during the tow, was it that the hawser parted?

A. The hawser parted just about that time; was just a few minutes after I let go the end. I couldn't exactly tell how long, but I remember just about the time the tow-line parted that was just about half-past

(Deposition of J. A. T. Olson.)

six because I looked at the time by my time.

Q. How long had you proceeded in that tow.

Q. I can't exactly tell. I was towed little more than the length of the tow-line because I was little back of the tow and he paid out the whole length of the line. He must have towed about a hundred fathom; little over hundred fathom or six hundred feet.

Q. Do you know whereabouts upon this hawser it parted?

A. Yes, between about half ways, I should judge, between the steamer and the vessel, because we hauled the line up and there was quite a piece of line. I didn't measure, but I should judge about twenty or thirty fathom we hauled on board.

Q. Then what did you do when the tow-line parted?

A. I dropped my starboard anchor right away.

Q. Did you hold? A. No.

Q. And which way did you steer in.

A. She gradually drifted all the time after that.

Q. And did you make any further signals?

A. No, I did not because my idea was—

Q. Just answer whether or not after the tow-line parted and you had dropped your anchor when you saw you drifted, whether later on you put up any signals?

A. When I seen he wouldn't come back again with the line, I hoist up my signals when I was far in.

Q. And how far were you from the breakers when you hoisted your flags?

A. Not very far from the breakers.

(Deposition of J. A. T. Olson.)

Q. What is your best judgment?

A. I threw my lead over just when I raised the signals up; there was eighteen feet of water right astern of the vessel. [100]

Q. Soundings were made?

A. Yes, soundings were made.

Q. What do you think the distance was?

A. I couldn't exactly tell the distance, but we can tell by reference to the chart where there is eighteen feet of water.

Q. Have you any judgment at all as to how far you were? A. It's very hard to tell the distance.

Q. Do you think you could have thrown a stone to the shore. A. No, I couldn't do that.

Q. How far do you think you were from the breakers?

A. I wasn't much more than about a couple of ship's lengths from where it begins to break.

Q. Then what was done after you hoisted your flags?

A. There was nothing done from half-past six to close to nine o'clock. There wasn't a thing done. It was very near nine o'clock when the steamer, when the boat, it was just about nine o'clock when we got the second hawser on board.

Q. What time was it when you hoisted your flags?

A. Just before he sent the boat.

Q. How much before?

A. Well, just as I come up with my signals, I got them hoisted, I looked forward and I seen there was men in the boat and going ahead to send the boat

(Deposition of J. A. T. Olson.)

down. I couldn't tell exactly if they made preparation before I hoist my flag down or not, I couldn't tell.

Q. Did you see them come toward you? Did you see this boat carrying the line coming toward you?

A. Yes.

Q. How long after you hoisted up your flags?

A. Just after I had the flags.

Q. Two hours is after?

A. No, no, no; right away; immediately.

Q. Was it five minutes or ten minutes?

A. Before they got on board?

Q. No. Now, you say that after you hoisted your flag you saw that they were making preparations. I'll ask you, after you hoisted your flag, how long was it before you saw them coming toward you?

A. I saw them right away coming. [101]

Q. What were they doing when you say they were making preparations?

A. They were getting the line, taking the boat; I couldn't see; she was pretty far away from me. I couldn't exactly see what they were doing.

Q. How long did these preparations last?

A. What preparations?

Q. Before they started to come for you?

A. I don't know what kind of preparation; I suppose they had the line right there; they didn't have to make much preparation.

Q. Now, captain, you said when you hoisted the flag you saw they were making preparations to come to you. I want to find out how long a time it took

(Deposition of J. A. T. Olson.)

them before they started to come to you before you hoisted your flags?

A. Didn't take no time at all.

Q. They didn't start until you hoisted your flags?

A. I didn't notice anything.

Q. Did it take five minutes before they started for you?

Mr. WARREN.—I object to that; the witness has answered three times.

The COURT.—I will allow the question.

Mr. RUSSELL.—What was it, Captain?

A. The vessel was too far away from me, I couldn't say exactly what they were doing. I couldn't see that; all I know was that over two hours from which my tow-line carried away before the time another line got on board.

Q. But the question is this, Captain, after you hoisted your flags I want to find out how long a time it took them before they started to come to you with the line? Now, you say that when you hoisted your flags you looked and you saw the boat making preparations? A. Yes.

Q. How long after that was it that the boat was coming toward you?

A. He come right away. As soon as I hoist my flags.

Q. It didn't take five minutes, would you say?

A. I guess it took them five minutes for to get from the vessel to my vessel. [102]

Q. You saw them before they started for you?

(Deposition of J. A. T. Olson.)

A. I saw the boat alongside.

Q. Was the boat alongside when you hoisted your flag?

A. So I believe he was. I believe the boat was there all the time. I don't believe he was hoist up.

Q. After you hoisted your flag where was she?

A. She was right ahead of me.

Q. Coming towards you?

A. Farther out in the harbor.

Q. What was she doing?

A. I don't know what she was doing.

Q. She wasn't coming towards you, was she?

A. I couldn't tell what she was doing. I had enough to look after my own vessel.

Q. Well, Captain, how long a time was it after you hoisted your flag that you saw this boat coming toward you with the line?

A. That's what I say, it wasn't very long; almost right away.

Q. Give us some idea, if you have any idea, in minutes or in hours?

A. It wasn't an hour.

Q. How many minutes was it?

A. I couldn't tell you how many minutes there was.

Q. Was it fifteen minutes?

A. Well, it ain't possible for me to tell the time.

Q. Do you think it was half an hour?

A. No, I don't think it was that long.

Q. Do you think it was fifteen minutes?

A. Somewhere around there; of course, in a case

(Deposition of J. A. T. Olson.)

like that it's pretty hard to tell the time.

The COURT.—I'd like to have you ask him in what way the boat came or did she drift. Was she let go on a line?

A. Yes, the boat was slacked down with a surf-line; they had a line on board on the steamer and she was slacked down; they were backing away with the oars, keeping the head to the sea; that's the way the boat come down.

Q. How many lines were brought to you? [103]

A. First one, the same line that was carried away; the same line that had carried away she brought first, then another line was brought down, a bigger line heavier-sized line, a line that I believe they use for stern-line to make fast to the buoys, a bigger line, a new line that had been used once or twice.

Q. Was that a seven-inch?

A. About seven-inch. I should judge the first line was a six-inch line.

Q. What was done with you then?

A. As soon as they got strain on the first line I heaved up the anchor and the harbor pilot come aboard just before they sent me the line; the vessel was towed out and we dropped the anchor in practically twenty-eight feet of water.

Q. What was done? Whereabouts were you?

A. We were little ahead of the "Enterprise," southward or westward of the "Enterprise."

Q. Captain, how far was this buoy to which you ran the line and to which one of your lines of the

(Deposition of J. A. T. Olson.)

vessel was tied, from the railroad wharf?

A. From the railroad wharf?

Q. Yes.

A. I think those lines, oh, they can't be more than about, I don't think they are more than 300 or 400 feet from the wharf, I should judge from the length of those lines.

Q. Captain, I'm not asking you exactly, I'm asking you just about your best judgment?

A. That's my best judgment; we used a half a coil.

Q. You say between three and four hundred feet?

A. I don't think there's much more than 300 feet from the wharf.

Q. And how far from the end of the wharf was this buoy?

A. There is three buoys, I believe. The outer buoy, I think, is a little farther out than any of the buoys.

Q. Little beyond?

A. Yes. Then there is another buoy little farther back and then another one little back again.

Q. What is the distance between the buoys? [104]

A. The distance between the buoy is about a couple of hundred feet.

A. And about the same distance between each of them? A. That is, about 150 or 200 feet.

Q. And about the same distance between each buoy? A. Yes, about the same distance.

Q. Which one of those three was it that you were tied to? A. To the back one.

(Deposition of J. A. T. Olson.)

Q. That means the one close shore?

A. Yes, the one farther in the harbor; I was tied with the stern-line. I originally had my stern-line to when I laid alongside the wharf.

Q. What was the wind?

A. The wind was about strong northeast.

Q. What were the swells?

A. The swells were about the same direction of the winds; something like that.

Q. Did you say north-northeast?

A. About northeast; probably varying a point either way.

Q. And you say the swells were about the same as the wind?

A. The swells was about the same as the wind.

Q. When this boat came to you with the line; that is, the first time, did the boat have any difficulty in reaching you?

A. No, I didn't see any difficulty.

Q. And how was the sea at that time with reference to the condition of the sea when you sent your boat out with a line to the buoy?

A. Not very bad.

Q. Was it about the same?

A. About the same; probably there wasn't, the weather wasn't that bad; there was a little more sea in the morning than in the night.

Q. That is, the weather wasn't as bad when you got the line the first time as it was when you sent the boat out to tie the line to the buoy?

(Deposition of J. A. T. Olson.)

A. No. The wind was about the same but the sea was increasing a little more.

Q. The sea was increasing? A. Yes. [105]

Q. Now, after you were anchored out about in the harbor, that is, after you were towed the second time, was anything said with reference to keeping a line on your vessel?

A. Yes. After we dropped the anchor out there, we let go both lines first and then the harbor pilot told me, he say. That steamer is going to lay off anchor right ahead of us that day.

Mr. WARREN.—I object to this, your Honor, as being hearsay and conclusion and opinion.

Mr. RUSSELL.—Did you have some talk with the captain?

A. I had a talk with the captain too, and the harbor pilot and me we went over to the steamer, alongside of the steamer and I asked him if they would keep one of the lines on board over the night. All right, he said, I send a line. I'm going to move a little further out and I believe if the wind increased, of course, that line would better be kept over night. It was slack; there was no wind.

Q. How long did you keep that line.

A. He kept it towards daylight and he sung out to let it go and I let go somewhere in the morning.

Mr. RUSSELL.—That's all.

Cross-examination.

Mr. WARREN.—Q. What were the sizes of your two breast-lines going to the wharf, Captain, that

(Deposition of J. A. T. Olson.)

night, before you broke away the first time?

A. Going to the wharf, five-inch line.

Q. Both of them?

A. The head-line, you mean, or the breast-line.

Q. The breast-line.

A. The one that carried away?

Q. Both breast-lines?

A. We didn't keep no breast-line; we had the breast-lines slack off and we just kept the head-line.

Q. Did you have any breast-line connecting the schooner with the wharf?

A. We used breast-lines when we discharged, but we slacked them up over night. [106]

Q. But they were connected.

A. I don't think we had a breast-line.

Q. Before you broke away at all, what lines did you have to the wharf?

A. A head-line and shore-line.

Q. And no breast-line?

A. I don't recollect that we have any breast-line; of course, I told the mate to slack them up.

Q. If you slacked them up that doesn't mean, cast them off, would it?

A. I don't remember if they were cast off or we kept them on board.

Q. What size were those lines, before you slacked them up?

A. Those lines were five inches, I think; I think forward we had a four-inch.

Q. What size was your head-line?

(Deposition of J. A. T. Olson.)

A. That belonged to the railroad. I don't know, but I think it's a nine-inch line.

Q. And your stern-line?

A. We had one of the same kind for the stern-line.

Q. How many buoys? A. I don't know.

Q. What size was your breast-line to the buoys?

A. Five-inch line.

Q. And how long were they to the buoys?

A. How long to the buoy.

Q. What distance from the schooner to the buoy?

A. The same distance that the schooner was from the buoy.

Q. That night which line broke first; that evening?

A. The head-line broke first.

Q. That was that nine-inch line belonging to the wharf? A. The nine-inch line broke first.

Q. And did your stern-line part at all?

A. No, the stern didn't, and I slipped my stern-line, let her go to get clear of that little schooner.

Q. And that left you with a breast-line to the buoy?

A. Yes.

Q. And what other line did you have with you after you got clear [107] of the schooner?

A. Then I had my anchor out forward and I had that breast-line tied up and it kept the vessel out of the schooner, and anchors out forward; and then I ran another line out to the buoy forward, because that forward breast-line I didn't know would she carry away or what she done.

Q. Anyway it separated from the ship?

(Deposition of J. A. T. Olson.)

A. Yes.

Q. The forward breast-line to the buoy parted in some weather, didn't it?

A. Yes, it parted in some weather; that's why I ran that line; I got a brand new six-inch line run to the buoy.

Q. And you made that fast forward on the schooner? A. Forward on the schooner.

Q. That new line ran over the bow to the same buoy to which your stern-line had been before?

A. Exactly.

Q. Can you guess at all the time of the morning that you burnt the flare lights?

A. I couldn't tell you exactly. I never looked at the time, but it was before daylight.

Q. Would it be nearer three o'clock or four o'clock?

A. I think it would be near four o'clock. It was after we had that line run.

Q. After you sent the line to the buoy?

A. After I sent the line to the buoy.

Q. After you sent that line to the buoy you had that line and your two anchors? A. Yes.

Q. And you say the schooner didn't drift them.

A. She was aholding.

Q. Why did you burn your flare lights?

A. I didn't like to lie there. It was not any more danger, but my idea was to get a tow; I wanted a tow to tow me farther out in the harbor.

Q. At that time when you burnt that flare light,

(Deposition of J. A. T. Olson.)

how near were you to those piles at Waiakea creek?

A. I couldn't tell you how far.

Q. I'll ask you to give me your judgment as to how near she [108] was to these piles?

A. I couldn't tell.

Q. You've given some other distances, according to your best judgment, I'd like to have you do it in this case?

A. My best judgment was somewhere about, six hundred feet.

Q. Your schooner was six hundred feet from the piles? A. I think so.

Q. How far was she from the wharf at that same time?

A. Well, she was pretty near the same distance from the wharf.

Q. And how far from the shore on your port side?

A. On the port side, oh, she was a long distance from shore.

Q. What way was your bow headed?

A. The vessel was headed about northeast; the direction northeast.

Q. That would be approximately toward the end of the wharf then?

A. Yes, something like that because the wind was blowing from the northward a little over the wharf toward the creek; towards the Bay of Hilo; towards the postoffice; the wind was blowing about from the northeast.

Q. Then you would say that you had not drifted

(Deposition of J. A. T. Olson.)

at all after you had gotten clear of the smaller schooner and dropped your two anchors and run a line, that you didn't drift after you got that line?

A. Not after I got that line tied. I drifted all the time until I got that line tied.

Q. When you were lying at the wharf you had your port anchor? A. I dropped—

Q. I'm speaking of the port anchor; that's what you had down when you were lying at the wharf?

A. Yes.

Q. How many fathoms of chain did you have out?

A. There was about thirty-five.

Q. In which direction was the chain running then?

A. Just out the bow.

Q. When you let down your starboard anchor, how much chain did you let out?

A. I couldn't exactly tell; somewhere around, I didn't let much chain out, because I wouldn't go back too far. I had less than fifteen. [109]

Q. Less than fifteen?

A. Somewhere around fifteen.

Q. Aside from breaking away from the wharf and going up to the schooner—Did you drag your port anchor?

A. I guess I dragged it a little until I got the line out.

Q. Until you got the line on, you think you dragged that anchor? A. Yes.

Q. How far had you drifted in distance before you got that line to the buoy?

(Deposition of J. A. T. Olson.)

A. I should judge about little over a ship's length.

Q. And how long did you lie fast with your two anchors and your line without drifting?

A. I may have laid over two hours; over two hours I think; somewhere around there.

Q. And during that time. At what time during that two hours did you make your flare light?

A. Somewhere around between four and five, I don't know exactly; I didn't look at the time.

Q. And when was it that you saw the boat passing and hailed the boat?

A. Just about the break of day. I wouldn't tell exactly the time. I couldn't tell it; impossible. I think there was daylight enough to see a little.

Q. Daylight enough to see? A. I think so.

Q. Any light being carried on the boat?

A. No, I didn't see any light.

Q. How far away were you from the boat?

A. I wasn't very far; not very far away.

Q. Well, a hundred feet, two hundred feet?

A. Somewhere around there.

Q. Will you give us your best judgment of that?

A. No, I don't know exactly how far it was from the ship. I don't know; near enough anyhow to see him.

Q. Now, Captain, if as a matter of fact it should be shown by the records in the engine-room of the steamer "Niihau" that she [110] started up her engines toward four o'clock in the morning, would that make any difference.

(Deposition of J. A. T. Olson.)

Mr. RUSSELL.—That's objected to as incompetent.

Mr. WARREN.—In your judgment as to what time you saw that boat?

A. It's impossible for me to tell when the steamer started up because I couldn't say; and what time the boat passed, I don't recall; I don't know exactly to an hour but somewheres towards morning, the boat passed.

Q. But you said it was daylight and sufficiently light to see the boat?

A. There must have been a light. I couldn't tell exactly the time the boat passed.

Q. Would it help you any if you knew the time of the starting of the engines; if you knew exactly that time; would that help you to fix the other time?

A. I don't think so; I don't think it would make no difference; of course, I got the ship's log-book, my time; not exactly down, but approximately.

Q. How long after you hailed that boat was it until you actually got the line from the steamer; can you remember that? A. No, I can't remember that.

Q. Would it be nearer five minutes or an hour?

A. I think it was longer than that.

Q. Longer than an hour? A. I think so.

Q. After you hailed that boat?

A. I think it was. I don't know exactly how long that was.

Q. Was it daylight when you got the line from the steamer?

(Deposition of J. A. T. Olson.)

A. A little before daylight; just about the break of day; I think it was somewhere, I don't know exactly, somewhere around half-past five or six o'clock I got the line.

Q. Did you at any time look at your watch to see what times these things happened?

A. Yes. When the line carried away I looked at my watch. I look at my watch when the line carried away and when I got the line on board when we had the tow the second time. [111]

Q. And as far as your statements of time are concerned for other times, that's simply your recollection without the watch and you might be wrong and you might be— A. Right.

Q. Right. A. Yes.

Q. What did you say you took soundings when you were lying at anchor with a line to the buoy? You took soundings? A. Yes, I took soundings.

Q. What did those soundings show?

A. They showed somewhere around sixteen or seventeen feet of water.

Q. Who took those soundings?

A. I took the soundings myself.

Q. Don't you remember what they were?

A. Sixteen or seventeen feet of water.

Q. And forward how much?

A. I didn't take soundings forward; I took soundings aft.

Q. What, in your judgment, was the full distance that you were towed that first time?

(Deposition of J. A. T. Olson.)

A. About seven or eight hundred feet probably.

Q. And did you yourself see the tow-line part?

A. Yes, sir, I was right there right when she parted.

Q. Have you any idea what made it part?

Q. No, just a strain, heavy strain on it because she was tight as a ——— when she parted.

Q. Did you see any mark of the rope on the mast; any marks there showing the strain?

A. Yes, I guess so.

Q. That was a new mast, was it?

A. Brand new mast.

Q. Did you see anything of the buoys forward of you at the time the line broke?

A. I don't think there was any buoy forward because we was far over towards Hilo side, I think.

Q. When the line broke, how far were you from the wharf?

A. Oh, a good distance out from the wharf; we were away to the northward of the buoys so we must have been a long ways out the [112] wharf; not out, but over that way.

Q. Over to the Hilo side of the wharf?

A. Yes.

Q. And when that line broke you immediately dropped anchor?

A. Immediately dropped anchor.

Q. How much chain did you let out?

A. I let out twenty-five fathom of chain.

Q. On your starboard anchor?

(Deposition of J. A. T. Olson.)

A. On my starboard anchor.

Q. And what is the weight of that?

A. Between 1800 and two thousand pound anchor.

Q. And your port anchor weighed what?

A. The port anchor was a little smaller.

Q. Just what time did that port anchor and chain part? What had you done?

A. I was heaving up the anchor when that port parted; just after we got the tow-line on board about in the morning.

Q. So that you had both of your anchors up to the time that the tow-line had been passed on?

A. Yes, I had both anchors up to the time the tow-line was brought on and we were fast.

Q. If anyone else has testified that this anchor, port anchor parted right after that boat returned from running a line to the buoy, would that be, in your judgment, incorrect?

A. That is not correct; they didn't know what they were talking about.

Q. You had just begun heaving the port anchor when it parted? A. Just begun heaving.

Q. In heaving up your starboard anchor, how far did you bring it?

A. I had it hanging in the hawse-pipe; I didn't have no time to bring it in.

Q. You have an old-fashioned windlass?

A. We can let it go quicker in that way by just starting the chain and letting it run out. [113]

(Deposition of J. A. T. Olson.)

[Title of Court and Cause.]

Tuesday, February 3d, 1914.

Cross-examination of J. A. T. OLSEN, resumed.

Mr. WARREN.—Q. I still feel uncertain, Captain, as to some of these things that you have mentioned. At first I understood you to say that you hailed this passing boat along about daylight?

[114] A. I don't know.

Q. You don't know?

A. I don't know the time. I don't know the time when I hailed the boat, sometime—sometime towards morning somewhere. I don't know what time it is.

Q. That would be anywhere from three o'clock to six, would it not, towards morning?

A. Yes, anywhere, any time.

Q. So that when you said before that you had hailed this boat about daylight, you were not sure that that was correct?

A. I ain't sure, because what I say—why I said so is because I could see the boat.

Q. Yes.

A. I could see the boat, that is why I say it is daylight. I don't know exactly what time I hailed the boat.

Q. If it was in the neighborhood of four o'clock in the morning then the boat must have been fairly close in order to have seen it?

A. Yes, passed about a ship's length from the ship.

Q. Now, Captain, you also said that it was along

(Deposition of J. A. T. Olson.)

about five or six in the morning, that you saw the steamer coming; how do you fix that time as five or six in the morning?

A. Well, how—I don't know exactly the time when he commenced coming.

Q. Then why did you say five or six?

A. Well, somewhere around there, I think. That is what I believe I believe, but I ain't certain of the time.

Q. Well, was it yet daylight when you saw the steamer coming?

A. Just about the break of day, I think.

Q. And yet if it was just about the break of day that the steamer was coming, yet you say it was an hour and a half before that somewhere around there that the —an hour that the boat had passed you?

A. I don't know exactly the time. [115]

Q. On that morning where was the steamer when you first saw her?

A. Well, when I *first the* steamer she was moving in. I think she was heading in towards the wharf, I think; she was going in for that little schooner.

Q. She was going bow first?

A. Bow first, going in.

Q. Towards the "Ka Moi"? A. Yes.

Q. How near did she approach to the "Ka Moi"?

A. Oh, not very near. I believe she dropped anchor then right about ahead of me somewhere.

Q. About ahead of you? A. Yes.

Q. And about how far away?

(Deposition of J. A. T. Olson.)

A. Oh, about half a cable length, about three or four hundred feet.

Q. And how far from the buoys, any of the buoys, was the steamer when she dropped anchor?

A. I didn't notice, I didn't take any notice of the buoys.

Q. Did you see the steamer drop her anchor?

A. No, I didn't notice it, but I believe she did. I didn't notice her drop the anchor, but I believe she did though. I believe she dropped the anchor.

Q. What move did the steamer next make when you saw her coming bow in?

A. I believe she dropped the anchor and swung. She swung anyhow head up to the wind, and she was sending a boat with a line to me.

Q. And she did the swinging in behind the wharf, did she?

A. Well, I will tell you the truth, Mr. Warren, that I never noticed, I didn't notice the movement of the steamer. It is no use to ask me a question about it, I didn't watch the movement. All I watched was when she was sending me the boat, sending me the line, that is all I was looking after.
[116]

Q. That line came to you after she had gotten her stern around to you? A. Yes, sir.

Q. Did you notice how she got her stern around, which way she swung, port or starboard?

A. I didn't notice that.

Q. Are you prepared to say, Captain, that that steamer did not come in stern first towards you?

(Deposition of J. A. T. Olson.)

A. I don't know.

Q. She may have come in stern first and not bow first?

A. She might come. I suppose if she dropped the anchor she was letting go and getting down to me a little closer.

Q. I only want to get at what you saw. Now, it seems to me that you are telling us some things that you did not see at the time but only what you believed.

The COURT.—If you will tell those things that you know we will get along faster.

A. Then there is no use of me telling you anything. I don't know what he done on board of the steamer. There is no use of my saying anything then.

The COURT.—If you don't know, say so, then we may progress and go on to something else.

Mr. WARREN.—Q. So that now you are not sure whether the steamer came bow first or stern first?

A. No, I ain't sure of that.

Q. And when you first noticed her was there any small boat out by her, alongside or near her?

A. I didn't notice it.

Q. You didn't notice that? Did you see the small boat start from the steamer and come to you?

A. I seen, I noticed while they were away from the steamer a little while.

Mr. RUSSELL.—Is this the first time?

Mr. WARREN.—The first time.

(Deposition of J. A. T. Olson.)

Q. You say you did see some small boat leave the steamer?

A. No, I did not. I did not say I saw it leave the steamer. [117] I saw it when it was away from the steamer awhile.

Q. Away from the steamer awhile? A. Yes.

Q. About how much of a distance from you did this boat pass?

A. I could not tell you that, I do not remember exactly. I know I noticed the boat, but I was forward when the boat come close, when I got the line from the boat. I didn't notice when he left the steamer.

Q. So that your best memory now is that the first time you saw that boat with the line that morning it was right near to you with the line?

A. Yes, to my best recollection. I don't remember if I noticed it before or not.

Q. And you don't know how long she had been coming towards you or when it left the steamer? A. No, I don't know.

Q. And how great was the distance between the steamer and the schooner when this line was passed?

A. Oh, not so very great. I guess the line was—he didn't give us all the line I don't think. I don't think he give us all the line.

Q. Well, how much of that line was used in making it fast on board your schooner?

A. Not much, it extends from the foremost to the chocks, the distance is not very far, about sixteen feet, I should think, something like that.

(Deposition of J. A. T. Olson.)

Q. Sixteen feet of line?

A. Oh, more than that, a little more than that was used.

Q. That is the distance from the mast to the chock? A. Yes.

Q. And that is so far as you know, that is all of the line?

A. Well, just enough to make fast, there was a couple of round turns around the mast, two, I think, and I think two or three around the mast, and two half hitches, that is all.

Q. You don't know how much of that line was on the other end on [118] board the steamer herself? A. No, I don't.

Q. And how did that boat approach you, by what means? A. He was pulling with the oars.

Q. Pulling with the oars?

A. To my best recollection he was pulling with the oars. I don't think he had the surf-line at that time or had any line on the boat at that time, just pulling with the oars.

Q. Coming bow on, pulling with the oars?

A. I think he was pulling. I don't remember exactly whether they were backing or pulling. The first time I think they were pulling bow on.

Q. And to your recollection you don't think they had a surf-line at that time?

A. No, I don't think so. I don't recollect the surf-line at that time, the first time.

Q. Now, Captain, did you notice whether that

(Deposition of J. A. T. Olson.)

boat went back to the steamer after she passed you the line?

A. No, I didn't notice. I recollect the surf-line we took the other time, but I don't remember the surf-line the first time. I don't remember whether she had it or not.

Q. They might have had it?

A. They might and they might not.

Q. And they may have come down stern first fastened to the surf-line?

A. They might have had a surf-line the first time, I don't remember that now, but I remember noticing the surf-line the last time.

Q. I am speaking of the first time. The first time they passed you a small line then they went back, did they, and you hauled the surf-line aboard, is that the way, or did they hand you the surf-line?

A. They did not.

Q. Did they hand you the tow-line?

A. I have forgotten whether we threw them a line or whether they [119] threw us a line, I have forgotten that now.

Q. But what you brought on board the boat was the hawser that they used to tow you with?

A. Yes, sir.

Q. That was how big, that line?

A. I think about a six-inch line, I didn't measure it.

Q. After you got that line fast did you notice what became of it?

(Deposition of J. A. T. Olson.)

A. She either hove it taut or went ahead, I don't know which. The line got taut anyhow. He tightened up that tow-line anyhow.

Q. And in what direction did the steamer pull you? A. Right out, I don't know.

Q. Parallel with the wharf?

A. A little out from the wharf.

Q. A little out from the wharf?

A. Yes, a little out.

Q. And not up towards the end of the wharf, you passed it?

A. No, a little out, I think so. Of course I never noticed much of the direction but I should think it was little out by the wharf.

Q. Now, while you were being towed, did you notice the position of any of the buoys around there?

A. No, I did not notice.

Q. The time the line broke did you take any note of where the buoys were?

A. No, I didn't notice the buoys.

Q. Exactly where were you standing on the bow when that line broke?

A. I was standing just alongside the line.

Q. Alongside of it?

A. Alongside of it on the bow.

Q. And you saw the line part?

A. I saw it part or I heard it. I heard just like a shot you know. You know like when a line broke, actually snapped.

Q. Did you actually have your eyes on it and see it part?

(Deposition of J. A. T. Olson.)

A. Not at the part exactly where it broke, I don't think, but I heard a snap and it broke and I looked and there is the line gone.

Q. So you don't know whether the line was in or out of the water at [120] the point where it broke?

A. I am sure it was out of the water a second before she broke because I noticed it before just at the snap. I didn't at the time, I was looking aft and I heard the snap and I turned around and it was gone.

Q. When that line snapped were there any signals passed between the schooner and the steamer of any kind, motions?

A. No, I did not—there was no motions done just right there.

Q. Any signals displayed of any sort? A. No.

Q. What you did was to drop your anchor?

A. Drop my anchor, and I was looking out after that to get that anchor down.

Q. Now, I thought you said you began drifting right at that time, gradually?

A. I could not tell exactly if she drifted right away. Of course I was paying out as much chain as I possibly could.

Q. How much did you pay out?

A. Twenty-five fathoms and then after that I could not pay out much more because she would get too close in if I paid out more chain, close in towards the shore.

Q. Now, in drifting that time, in what direction did you drift? A. With the wind and sea.

(Deposition of J. A. T. Olson.)

Q. I know, but as compared with the direction of the previous drift?

A. Well, she drifted about—with the wind and sea in the same direction, but she was further out, away from the wharf, the vessel was further out in the harbor towards the north I should think, the compass direction there north.

Q. Where you were lying the first time before the line was passed to you, if you had continued to drift, your anchors and line to the bow not holding, where would you have brought up, as far as you could see; where with respect to the mouth of the Waiakea river?

A. I would have brought up on the beach at Hilo, I don't know exactly where. [121]

Q. I mean in towards the mouth of the creek or piles?

A. I think I would have gone past the piles if the anchor had carried away the first time. I think I would have gone past the piles because there seems to be a kind of current setting out from the river there.

Q. And the second time when you dropped the anchor at the time the line broke, you felt that you could only let out twenty-five fathoms?

A. That is all I could pay out, and that is all there would be any good to pay out in that much water, in eighteen or twenty feet of water, whatever it is. If twenty-five fathoms of chain would not hold her there, that little boat, she would not hold anyhow.

Q. Now, in your position where the line broke,

(Deposition of J. A. T. Olson.)

was that nearer the Hilo beach than your position before you first towed?

A. No, well—no, it was further away from the Hilo beach.

Q. And yet the previous time you let out a good deal more chain didn't you?

A. I had more chain out all right, I had my—I had my—I had my port anchor—the port anchor was placed away out, outside the end of the wharf. The port captain placed that anchor anyhow.

Q. At the time that line broke did you notice any small boats around, at the time the line broke?

A. I seen lots of small launches around the boat.

Q. Did you hail any of those launches?

A. No, I did not hail any of them.

Q. Did you have any conversation with anybody on any launch soon after that line broke?

A. No, not to my recollection. I think that the pilot man was around, or pilot boy was around there once, I think I seen them. I don't know whether I got to see him—I mean speak to him, I might and I might not.

Q. When that line parted did you make any effort to get a line [122] from any other place?

A. I had no lines on board the ship.

Q. Did you try to have a line brought from some other place?

A. No, I did not. I thought the steamer would send me a line back again, that was what I was waiting for.

Q. You were waiting there for the steamer to send

(Deposition of J. A. T. Olson.)

another line? A. A line.

Q. And you waited two hours and a half before you made your signal? A. I did.

Q. Drifting on the beach all the time?

A. I don't think it was quite two hours and half. It was over two hours anyhow.

Q. Is it not a fact that you lay at anchor there without drifting materially for a good long time, an hour and a half or two hours?

A. No, she was continually sagging, sagging, sagging all the time towards the beach, the whole time sagging a little.

Q. Did you consider that you were in danger of getting ashore?

A. Yes, I was in danger then, danger all the time after that tow-line broke.

Q. Serious danger?

A. Pretty serious danger.

Q. And you waited until you were close to beach before you put up any signal flags? A. I did.

Q. Now, from the time the line broke until you put up the signal flags, did you observe the steamer at all?

A. Yes, I seen him laying there.

Q. What did she do?

A. I don't know what she done.

Q. Well, did she move, as near as you could see?

A. I don't know whether she moved or not.

Q. Can't you tell, Captain? You were there on board your schooner. You should be able to tell,

(Deposition of J. A. T. Olson.)

considering that you were in serious danger and anxiously waiting for another line from that steamer and yet you say you cannot tell what that steamer did? [123]

A. No, I cannot tell what it did.

Q. You cannot answer? A. No.

Q. Very well, you know she might have made a big circle in that bay there, and you not notice it?

A. No, I don't think she made any circle in the bay.

Q. When she sent her second line, the second time after you had put—which you had got after you put your flags up, was she in the same position as she had been when the line broke and she dropped anchor?

A. To my appearance, she was. After a little I believe she slacked a little and come a little closer to me.

Q. You think that the most she could have done was to slack away on her anchor chains so as to come a little closer?

A. That is the way it was done—it looks like it anyhow to me.

Q. When the line broke do you know whether the steamer dropped anchor or not?

A. I don't know whether she dropped anchor or not.

Q. But you do know that she had her anchors down at the time the second line was sent to you?

A. Yes, she had the anchor down to all appearances, it looks like it. I could not tell whether the

(Deposition of J. A. T. Olson.)

anchor was at the bottom or not, that is impossible, but to all appearances it looked like it.

Q. And for all you know that steamer may have anchored and later picked up her anchors and made a circle around you in the bay and come three quarters of the distance towards you, dropped anchor again and swung around stern to, paid out chain and you not noticed all of that; can't you answer that at all, Captain?

A. No, I cannot answer because I do not want to say anything without I know that.

Q. Do you mean to, give us your judgment that that steamer let you drift for in the neighborhood of two hours towards the beach without [124] doing anything so far as you could see?

A. He might have done something. I don't know what he done, but my idea is that he could have got a line sooner aboard.

Q. That is only your idea?

A. That is my idea about it, yes.

Q. When you put your signal flags, how long was it after that that you actually got the line?

A. That was not long.

Q. That was only about four minutes by the watch, was it not, Captain?

A. I did not look at the watch, but that was not long.

Q. Have you not said before this that it was five minutes,—not in giving your testimony, but up in Hilo, didn't you say that it was five minutes, not more

(Deposition of J. A. T. Olson.)

than five minutes that you got the line after the flags were up?

A. I don't know anything what I said before.

Q. Can you say now whether it was?

A. I cannot give any exact minutes of time, it is impossible. I cannot do it. It did not take long.

Q. Well, would you say it would be more than five minutes?

A. I cannot say anything of that kind. I would not say to minutes, no exact time.

Q. Where did you first notice that boat the second time when she came in with a line?

A. Well, I noticed them as soon as I looked around after I had my signals up. I went down in the cabin to get the flags and as soon as I had the signals up and I had time to look around then I saw the boat coming.

Q. Were there any other vessels lying in Hilo Bay besides steamer "Niihau" and the sailing vessels?

A. Well, there was a little schooner there.

Q. Besides the schooner. There was the "Enterprise," was there [125] not?

A. Yes, the "Enterprise." The "Enterprise" was there and that little sailing schooner, there was no other sailing vessel there.

Q. The only steam vessels in the bay were the "Niihau" and the "Enterprise"? A. Yes, sir.

Q. Then there were some small launches?

A. Yes, there were some small launches.

Q. And in making—putting up your signals, was

(Deposition of J. A. T. Olson.)

that intended for the steamer "Niihau"?

A. Well, yes, that was intended—yes, that was intended for the steamer "Niihau." Of course she was more likely to give me assistance.

Q. When was it that you told the small boat to hold on to your line that you had let go as you were paying out during the first tow, you had a line to the buoy? A. Yes.

Q. And you paid that out until you came to the end of it and let go of it? A. Yes.

Q. Was that the time that you told the small boat to take care of it so that you would not lose it?

A. Yes.

Q. Do you know what that boat was?

A. I think it was the boat that used to land the pilot, I believe it was him.

Q. One of the launches, was it not?

A. Yes, one of the launches, yes.

Q. And just what conversation did you have with the boat about that line?

A. I told him to get that for me. I believe he went over there anyhow to let it go and I sung out to him, "Don't let it go, because I have got to slip it yet, don't lose it." And he came back again, I believe, and told me that the line was fouled, he could not let it go.

Q. Was that before or after this tow-line broke, from the steamer?

A. That was the second time. I believe that was after the tow-line broke, the second time, I was talk-

(Deposition of J. A. T. Olson.)

ing to him. I believe that somewhere around there anyhow, I don't remember exactly about this.

Q. Right about the time the line broke was that same launch around [126] you?

A. That time—it was somewhere in Hilo Bay, I don't know whether it was close to me or not.

Q. Did you have any conversation with that launch man other than asking him to get that line on the buoy?

A. Not to my recollection, I don't recollect it.

Q. Captain, is it not a fact that that launch came alongside your vessel right after the tow-line broke and asked you if you didn't want to run another line to a buoy?

A. No, I don't remember it. He was around there shouting something, but I don't know what he said.

Q. Well, do you know what you said in reply?

A. I don't remember what I said. I don't remember what I said. I didn't have no line anyhow to run, I didn't have it.

Q. Did you tell the boy that you had no line?

A. I don't remember. I don't remember if I told him anything.

Q. Did you tell that boy that you didn't need another line?

A. No, I don't think I said—I don't think I said so. I don't think so.

Q. Did the boy make you any offer of any sort about lines?

A. No. No, I don't remember if he made any. I

(Deposition of J. A. T. Olson.)

don't remember his making any offer to me about anything. I don't remember it.

Q. Will you go so far as to say that no boat did make you an offer about lines?

A. I cannot remember it, anybody making me an offer. I cannot remember it. If I—I think if a boat should have made an offer of a line I would have taken it at that time.

Q. That is your judgment now?

A. That would always be my judgment that time though of course I don't remember. I would certainly if he made me an offer of a line from the steamer to tow me further out I certainly would take it.

Q. But if he made you an offer to run a line to you from a buoy, what about that?

A. Well that would be all right. [127]

Q. That would be all right?

A. Yes, I would take it. I don't remember now.

Q. Well, you say now that such an offer was not made to you, Captain?

A. No, I don't remember.

Q. You would not say that it was not?

A. I don't remember anything of that kind.

Q. And you asked that boat however to get the line for you from the buoy?

A. Yes, and they could not do it.

Q. And they replied that it was fast around the buoy chain? A. Yes.

Q. And they could not get it loose?

(Deposition of J. A. T. Olson.)

A. When I think over the thing now I think the boat asked me if he could do anything for me—if he could do anything for me. I think he asked that and I think I said, "No, I don't think you can do anything for me," I think that is what I said. I did not see what he could do for me at the time because I didn't have any line to give him.

Q. Well, do you remember that you told the boat that you didn't have any line?

A. Yes, I remember telling him that, or I don't remember telling him that I didn't have any line, but I think I told him that I didn't think he could do anything for me because I didn't have any line, I think I said that.

Q. Did you ask that boat to take any message to the steamer? A. No, I did not.

Q. That was after the line broke, was it not?

A. No, I did not tell him to take a message to the steamer.

Q. Why not?

Mr. RUSSELL.—Why, not, Captain?

A. Well, I didn't see any use, because I thought the steamer would see what plight I was in, and I didn't know he had any communication [128] with the steamer anyhow.

Mr. WARREN.—You didn't think the launch could get out to the steamer under her own power, perhaps? A. Oh, yes, I guess he could.

Q. Now, do you remember hearing anything said by any of the other men in that boat besides the man in charge?

(Deposition of J. A. T. Olson.)

A. No, I don't remember anything said.

Q. Do you remember anyone in that boat calling up to you that you were drifting and that you would go ashore? A. I don't remember it.

Q. You don't remember that? A. No.

Q. Will you say now that you did not say in answer to anything said from the boat that you were not drifting?

A. I don't remember anything about it.

Q. Well, Captain this was the particular time for you, or can't you remember a little in a general way about that?

The COURT.—That is pretty hard for him to answer.

Mr. WARREN.—It is for the captain to say and if he wants to say so it goes right down in the record.

A. I don't remember anything what happened, no conversation and things like that.

Q. I am not asking you to give me the words, Captain, just the substance of what was said, anything to that effect?

A. No, I don't remember any conversation. There was all kinds of words and things what they said, but I don't remember the general run of it.

Q. All kinds of what?

A. All kinds of things said, probably men were shouting here and there but I don't know what they were talking about.

Q. I understood you to say on direct examination, in answer [129] to Mr. Russell, that five minutes

(Deposition of J. A. T. Olson.)

after you slipped your starboard anchor the tow-line broke, is that right?

A. Slipped? I didn't slip any anchor. I didn't say any such thing.

Q. When the tow-line was made fast the first time you began heaving in your starboard anchor?

A. I was heaving on the two anchors.

Q. And the port anchor broke? A. Yes.

Q. And then you were heaving on your starboard?

A. Yes, sir.

Q. How long after you got that anchor up to your hawse-pipe until the line broke?

A. Not very long.

Q. Is that what you mean by five minutes?

A. It was longer than five minutes. He towed about a distance before—she towed a distance before the tow-line broke, towed quite a distance.

Q. Then give us your best judgment how long in time that first tow took?

A. Well, I could not tell you exactly how long the tow took; I was too busy.

Q. Not exactly, as near as you can remember, you have assumed it is quite a distance for Mr. Russell?

A. I may be a way wrong in the time, I may be a way wrong.

Q. Captain, you may be a way wrong in all the estimates of times and distances that you have given to-day?

A. No, some of it I know the time. Well, I know

(Deposition of J. A. T. Olson.)

the time right when I took the line aboard because I happened to look at my watch that time.

Q. Then you also looked at the watch when you got the tow-line the second time?

A. I guess about fifteen or twenty minutes or so or probably longer, probably half an hour.

Q. And you think that line parted about half-past six in the morning? [130]

A. About half-past six.

Q. That was the time that you looked at your watch?

A. Yes. I don't know if my watch was right. I know somewhere around there.

Q. Now, can you tell us your best judgment of how far the "Haleyon" was from the sand beach at the time you got the tow-line the second time?

A. Oh, probably three or four hundred feet, probably a little more.

Q. That is just a rough guess?

A. That is just a rough guess.

Q. Would you think it would be as little as two hundred feet?

A. No, I don't think it would be less than that. Somewhere around there.

The COURT.—The most definite question there would be how far from the breakers perhaps.

A. There was four hundred feet all right from the sand beach. I believe that was. There were launches passing astern of me, and they would be breaking about two hundred feet, I should think, in

(Deposition of J. A. T. Olson.)

a matter like that, the breakers would go out that far, over a hundred feet, I guess.

Mr. WARREN.—Then you would think that you were about two hundred feet from the breakers?

A. Yes, about a ship's length from the deck, that is where they broke.

Q. Your deck is how long?

A. About one hundred and thirty feet somewhere around there.

Q. Now, if several other witnesses have given their judgment of that distance as from the schooner to the sand beach as about two hundred feet more or less, would that have any effect on your judgment?

A. No, because the thing is hard to tell. [131]

Q. It might be as little as that?

A. Hard to tell. It might be, but I don't think so.

Q. Did you notice on the beach a black object there?

A. No, I did not notice, never looked at it.

Q. Did you hear at any time of another vessel having been ashore right near there?

A. Yes, I told you about it. I never paid no attention to it, I don't know anything about it.

Q. You did not see a big black boiler on the sand beach there?

A. No, I did not see, I did not notice. I have heard people telling.

Q. Now, you say in weather like that the breakers would be breaking maybe a ship's length behind you?

A. Yes.

Q. Pretty heavy weather wasn't it, Captain?

(Deposition of J. A. T. Olson.)

A. Oh, yes, I have seen it worse.

Q. You have seen it worse? A. Yes.

Q. And don't you really think it was really bad weather?

A. I blew about forty miles an hour, I guess; I have seen it blow more than that several times in my life.

Q. This was blowing perhaps forty miles an hour?

A. Yes.

Q. And how was the sea?

A. Well, there is always more or less sea in Hilo Bay in that kind of wind.

Q. I am asking you how it was there?

A. Some sea.

Q. There was really too much sea to be safe for a small boat—to be out in a boat, wasn't there?

A. No. I didn't see any danger for a big whale-boat, something like that, the weather was not that bad that it would be dangerous for a big heavy whale-boat like that.

Q. By a whale-boat you mean a steamer's boat?

A. Yes, a steamer's boat.

Q. What is the size of your own boat on the schooner? [132]

A. That is only fourteen or sixteen-foot boat.

Q. You consider it would be dangerous in such a boat?

A. Not when there is one man on board to handle it.

Q. You have men on board to handle it, have you not?

(Deposition of J. A. T. Olson.)

A. Yes, sir. I have pretty fair men, they didn't have no trouble to get that line out.

Q. I am not talking about that, Captain. After you had been towed out the second time and the line had been made fast and you were held there all that day, did you leave your schooner at all to go ashore?

A. That night?

Q. That day after you had been towed out the second time and the steamer held your line all day and the next night, did you go ashore that day?

A. I told you that is a thing I don't remember if I did or not.

Q. Really, Captain, don't you remember that?

A. No.

Q. Don't you remember that you made a statement under oath before a notary public up in Hilo that you did not? Tell us the truth, Captain, don't tell us you don't know now?

A. I went the next day ashore.

Q. I am asking you that day, Captain, you didn't go ashore, did you?

A. No, I don't remember. I don't think I did.

Q. Didn't you remember that well enough to make oath to it in Hilo before the notary public?

A. No.

Q. You don't remember that?

A. Yes, I remember.

Q. Then you did not go ashore that day?

A. No, I went ashore the next day.

Q. Why didn't you go ashore until the next day?

(Deposition of J. A. T. Olson.)

A. I thought it might blow up again. It did not blow much that night but—but—but I didn't trust exactly the weather that night.

Q. Is that the reason you included in your affidavit? [133] A. Yes.

Q. It is? A. Yes.

Q. That you were afraid to leave the vessel?

A. Yes.

Mr. RUSSELL.—That is objected to if the Court please. If there is anything in that affidavit that describes the reason the counsel should call to his attention and ask him if that is the reason.

The COURT.—That is that he did not go ashore because—

Mr. WARREN.—That is the weather was too rough for it to be safe.

Q. Didn't you make that statement, Captain, up in Hilo?

A. No, I did not. I have got the affidavit here. I have got a copy of it and I didn't say the—what was on the affidavit, the weather was moderating that night you know. The weather is moderating. There is nothing about that there that the weather was rough.

Q. You didn't put that in the affidavit, Captain?

A. It is there (pointing to paper).

Q. This is a duplicate of your notice, marine notice of protest made before George H. Williams, notary public, January 15th 1914? A. Yes.

Q. Then, Captain, do you remember the conversation that you had in the office of the Hilo Mercantile

(Deposition of J. A. T. Olson.)

Company in the presence of myself, Mr. McCoy, Mr. Nichols, and I think also Mr. Bartels of Hackfeld and Company, I am not sure about the latter, in which you stated that you had not made a note of marine protest for the reason that you could not have safely left the ship, didn't you say that?

A. Yes, I believe I said that.

Q. You believe you did? A. Yes.

Q. The weather was too rough for you to have risked leaving the ship, that is why you could not make your protest within twenty-four hours?

A. The weather was not exactly rough, but I was [134] doubtful about the weather, about it blowing up, but the weather was not rough. The weather report will—

Q. Do you remember Mr. Nichols saying to you that it would be well for you to include that in your affidavit on the protest in order to show why you had not noted a protest within twenty-four hours, do you rememeber that?

(No answer).

Q. What signal flags did you send up? A. N. C.

Q. What does that mean?

A. Immediate assistance.

Q. And at that time you were sure the boat was slacked down with a surf-line? A. Yes.

Q. And hauled back with a surf-line? A. Yes.

Q. And when they had gotten the surf-line up to your vessel as you were taking it on board that time,

(Deposition of J. A. T. Olson.)

in what direction was the "Halcyon" headed, toward what point on the land, if anything?

A. She was heading right head out, head out towards the whistling-buoy, as near as I could see.

Q. Head out towards the whistling-buoy?

A. Yes, sir.

Q. Did she at any time head any nearer in than that towards the hill?

A. No, she commenced to swing a little, port a little too when I got it.

Q. She was beginning to turn broadside when the line came? A. Yes.

Q. Do you think she got around as much as a quarter? A. A quarter of a point.

Q. Say on her port quarter, to get the beach on her port quarter?

A. Yes, she commenced to get the beach a little on the quarter.

Q. Now, when Pilot Mosher came out in a small boat, a small [135] launch, to which side of your vessel did he come first?

A. I didn't notice him before he was right astern of me and his launch seems to be breaking down and he dropped his anchor until he got his machinery started again in the launch.

Q. He was completely astern of you when you noticed this?

A. He was completely astern of me when I noticed this. Some of the boys said they saw him before, but I didn't see him before.

(Deposition of J. A. T. Olson.)

Q. And when you saw him again in what direction was he heading?

A. His launch was broken down and he had already anchored when I first noticed him.

Q. After he got his launch in shape again on what side of your vessel did he come aboard?

A. I didn't notice what side. I didn't notice him until he was right on the deck and speaking to me.

Q. Was that line from the steamer aboard your vessel before or after the pilot came out?

A. I don't remember it. I think we was just about working, getting the line somewhere around there, I don't remember if the line was already passed or if he had come.

Q. How long was he held up by the launch being out of order? A. Not very long.

Q. As much as ten or fifteen minutes?

A. I don't think that long.

Q. When did you first notice him aboard?

A. I didn't notice him when the launch broke down and I didn't notice when his engines started again, so I couldn't tell exactly how long he was in getting in there.

Q. What was the condition of things when Pilot Mosher got on board the schooner, when you first noticed him on board, had the line been run?

A. It was either run or he was running it. Either run or running. He was working there with the line at that time. I don't know whether the line was fast, I don't think the line was fast. [136]

Q. Until the time your line was fast your vessel

(Deposition of J. A. T. Olson.)

was gradually drifting broadside? A. Yes.

Q. And when that one line was made fast did they do any heaving before they ran the second line?

A. I think he hauled that line taut.

Q. And did that change the position of the schooner to head her around straight?

A. Yes, she commenced to straighten up.

Q. And then they ran the second line?

A. And then they ran the second line.

Q. Then what did the steamer do?

A. I believe he was heaving in his anchor, and taking in the slack.

Q. Do you know how many anchors the steamer had out? A. I don't know.

Q. Now, after heaving on it they picked up their anchors, the steamer? A. I suppose he did.

Q. And then steamed? A. I suppose he did.

Q. Now, was there any stopping in that work of the steamer from the time they got that first line on until she got you out, did she stop work?

A. No, they did not stop, working all the time.

Q. And when you had been towed out somewhere near the "Enterprise," was it? A. Yes.

Q. Then you dropped your anchor? A. Yes.

Q. At whose suggestion, yours or Captain Mosher's? A. Captain Mosher's.

Q. Then did you make any signal to the steamer to stop?

A. The time that Captain Mosher came on board I left it to him, it was his business taking the vessel up then.

(Deposition of J. A. T. Olson.)

Q. You were right near? A. Yes.

Q. Did he make a signal to the steamer to stop towing? [137]

A. I believe he did because Captain Mosher had come aboard too.

Q. After you had stopped towing and had dropped anchor, you and Captain Mosher went over to the steamer in Captain Mosher's launch?

A. Yes, sir.

Q. What conversation did you have over there with the captain of the steamer?

A. We asked him if we could have a line on board, I was going to-night.

Q. That is to hold on during that day? A. Yes.

Q. And night? A. Yes.

Q. What did he say to that?

A. All right, he said.

Q. Did he say anything further than all right?

A. I believe he wanted to move a little further out, drop his anchor a little further out—he wanted to do something anyhow.

Q. Wanted to get his anchors in a little better position? A. That is about it.

Q. So to do that he let go of your lines for the present? A. For the present.

Q. Then he got his position? A. Yes.

Q. And dropped his two anchors? A. Yes.

Q. And took your chain—took your line on again?

A. Yes.

Q. And you lay that way until the next morning about seven o'clock?

(Deposition of J. A. T. Olson.)

A. Somewhere around there, and he made a signal to us to let it go.

Q. And by that time the weather had moderated a good deal? A. Yes, sir.

Q. Did you drop your own anchor as well?

A. I had my own anchor down all the time.

Q. And how much chain had you out?

A. Forty-five fathoms in the water, the kedge.

Q. And from that time you lay at that one anchor for several days [138] until you came to the wharf to discharge again? A. Yes.

Q. And the weather had moderated a great deal, had it not? A. Yes.

Q. During that time as you lay there, the wind and sea were pretty strong, were they not?

A. Well, not a great deal more—not a great deal. A great deal better than it was that night of the 13th.

Q. And better than the night of the 14th?

A. Yes.

Q. The night of the 13th, that moderated a great deal then? A. Yes.

Q. And the morning of the 14th you were able to lay at your own anchor?

A. Oh, well, we would have laid there that night too.

Q. But you didn't ask to have the line let go?

A. No, I didn't ask.

Q. And in the morning did you ask to have the line let go or did the captain of the steamer call to you to let go? A. He called to me to let go.

(Deposition of J. A. T. Olson.)

Q. And you cast off on board the schooner?

A. Yes, sir.

Redirect Examination of J. A. T. OLSON.

Mr. RUSSELL.—Now, you say, Captain, that during the time elapsed from the time that the hawser parted and until you put up your flags, that you don't know what the steam vessel did. Now, do you mean to say that you did not observe the vessel at all during that time?

A. Oh, yes, I observed her, I looked at the vessel, I seen that. [139]

Q. Can you state whether or not she moved about any?

A. No, I could not say. I could not—I could not state that.

Q. How many times did you see her—that is, how frequently did you see her, how often?

A. Every time I looked in that direction.

Q. And could you tell as you observed her whether or not she moved; was it possible for you to say whether or not she had moved?

A. Oh, well, it is pretty hard for me to tell whether she had moved or not.

Q. It was dark, was it, that night?

A. No, that was not dark, that was clear light at that time.

Q. If she did move it was just a short distance?

A. Yes, not very—she could not move very far, I guess.

Q. So that if she had made a circle of any sub-

(Deposition of J. A. T. Olson.)

stantial radius you would have observed her?

A. Yes, I would have, I think so.

Q. Now, you say that at the time that the hawser parted you did not see the line, but that you did see one before; well, how long before was it?

A. Oh, about a minute before.

Q. And did you observe that the hawser was then all out of the water? A. Yes, that is right.

Q. Well, now, say at the point where the hawser parted how much out of the water was she?

A. Oh, she might in a sea way you know—she might be a foot from the water or she might be a few inches from the water. She wouldn't be in the same way all the time you know in a sea way.

Q. And how high out of the water was the—was the "Halcyon" then?

Mr. WARREN.—At the bow where the rope was?

Mr. RUSSELL.—At the bow, yes. [140]

A. At the bow?

Q. Yes.

A. Oh, the vessel's bow would be about sixteen feet I should think out of the water.

Mr. WARREN.—At the chock?

A. Yes, somewhere around sixteen feet I should say.

Mr. RUSSELL.—And it would be just about the point where you have described as the chock that the tow-line was attached or run?

A. I didn't catch that question.

Q. This tow-line comes to the chock—the tow-

(Deposition of J. A. T. Olson.)

line is attached to the vessel and goes out or through the chock?

A. She goes through the chock. The tow-line being in the chock *then the* was fast to the mast, but she parted away outside of the chock, half ways between—

Q. Yes, I understand. Then the tow-line was up about sixteen feet from the water? A. No—

Q. No, that is—

A. Too long. It is almost impossible for a long line to be as a fiddle string, also you know she will sag a little down, you know.

Q. I mean right there at the boat, right there at your vessel where she was attached? A. Yes.

Q. She was about sixteen feet from the water line? A. Yes.

Q. Now, did the rope slacken any during that tow?

A. No, not much. It could not slacken much in that wind and sea you know. The vessel was hanging on to the steamer then, nothing else holding her there but the tow rope. It would not slack any time, it would be taut all the time.

Q. In other words the steam vessel was pulling all the time?

A. All the time, even if she was not pulling the rope would be tight because the vessel would be back.

Q. Well, do you know where those buoys are there in the harbor— [141] you have observed the location of the buoys? A. Yes, sir.

(Deposition of J. A. T. Olson.)

Mr. WARREN.—Those are the three that have been mentioned before? A. Yes.

Mr. RUSSELL.—Are there any other buoys there in the harbor in that vicinity?

A. Not to my knowledge.

Mr. WARREN.—The others are further out.

Mr. RUSSELL.—Now, do you recall your position, where you were just at that time while you were being towed? A. Yes.

Q. Do you recall the direction that you were proceeding in that tow? A. Yes, I recall.

Q. Now, were any of those buoys there between you and the vessel?

A. No, sir. The buoys were on the starboard side, all of the buoys.

Mr. WARREN.—On the starboard side?

A. The buoys was all on the starboard side. Of course that time we was towing, I remember that well, because my line—my line that I was paying out, she was laying right across my—I had it in on the port bow, you see, and they were laying right across that line that I was paying out. She was lying right across my bow there that way (illustrating) so my buoy—the buoy must be on the starboard side of me the time she was towing on me.

Q. So that it was impossible for the tow-line to have come in contact with any of those buoys?

A. Yes, impossible. I don't see very well how they could. I didn't notice exactly the buoys, but the way that line was what I was paying out and

(Deposition of J. A. T. Olson.)

was leading to, the buoys must have been on the starboard side of it.

Q. Had you ever been in the harbor before?

A. Once, about four or five years ago.

Q. How long were you there?

A. Oh, I was there about a week I think. [142]

Mr. RUSSELL.—This is a duplicate marine note of protest? A. Yes.

Mr. RUSSELL.—I ask that this be marked Libellant's Exhibit 3 for identification.

(Note of protest marked Libellant's Exhibit 3 for identification, J. W. J.)

The COURT.—Captain Olson, what time of day was it when the first tow-line parted?

A. When the line on the wharf, your Honor, or the tow-line?

Q. The first line, the tow-line?

A. The tow-line, about half-past six in the morning, about six-thirty in the morning.

Q. And was it light?

A. Yes, it commenced to get light.

Q. And what kind of weather was it, was it raining? A. Yes. Yes, squally weather.

Q. Was it what you would call heavy?

A. Well, rain, showers, and squally weather.

Q. Well, now, would it have been possible for the steamer to have at that time made a circle around the bay and come in and anchored nearer to you than before without your noticing it?

A. No, I don't think they made any circle. I don't think so. I think I would have noticed if he

(Deposition of J. A. T. Olson.)

had made a big circle.

Mr. WARREN.—The buoys were on your starboard side, Captain, when you were being towed that time? A. Yes.

Q. Then you were between the buoys and the wharf were you?

A. Oh, no. I could not be between the buoys and the wharf. The starboard side is my right-hand side when I stand in the ship and look forward, and the port was on the left-hand side.

Q. Then let me ask you about your anchors, were you not mixed up— [143]

A. You may have noticed because I changed the anchors afterwards.

Q. You changed anchors?

A. I changed anchors afterwards because I got to use the port anchor being alongside the wharf, so the time I had to go alongside the dock again I changed and put my starboard anchor at the port side when Captain Mosher was there, at the same time I done it.

Q. And you did that before you came up to the dock the second time?

A. The second time. And it was done in the morning.

Q. Still you didn't notice any of the buoys when you were being towed that time?

A. No, I didn't notice because my line was fast to them. I know the direction of the line aboard. He was towing me this way, and here is like the tow of the steamer. Now I cannot exactly say that was the

(Deposition of J. A. T. Olson.)

distance it was, but I illustrate it (illustrating on chart of Hilo Bay, marking position of steamer with letter S). Now I ain't going to tell you the distance but I show you the position, one to the other. Now he towed me here and I made a line fast to that (Indicates position of "Halcyon" with letter H.) I was letting out all the time on this line, from that buoy up here slacking out. I had the line on the port bow and that line was across my bow and I was slacking out all the time on that line, and just after I slipped, the tow-line carried away.

(Position of buoy is marked with the letter B by witness.) The witness draws a line on the chart from point marked B to point marked H as indicating the line that was being slacked while in tow. Chart referred to being Libellant's Exhibit "B.")

Mr. WARREN.—But this point B, Captain, that you have just marked on this map is not intended to indicate the position of the buoy?

A. Not exactly the position of the buoy. [144]

Q. That buoy was the one nearest the shore?

A. Yes, but that is used to show that I had the buoy on that side when I was towing, on my star-board side.

The foregoing is a true copy of my shorthand notes.

(S.) J. W. JONES.

[Endorsed]: No. 139. (Title of Court and Cause.) Depositions *De Bene Esse* of Fred Sach et als. Filed Apr. 1, 1914. A. E. Murphy, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. [145]

06'

155°05'

04'

258
m.l. sh

268 gy S brk sh

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160

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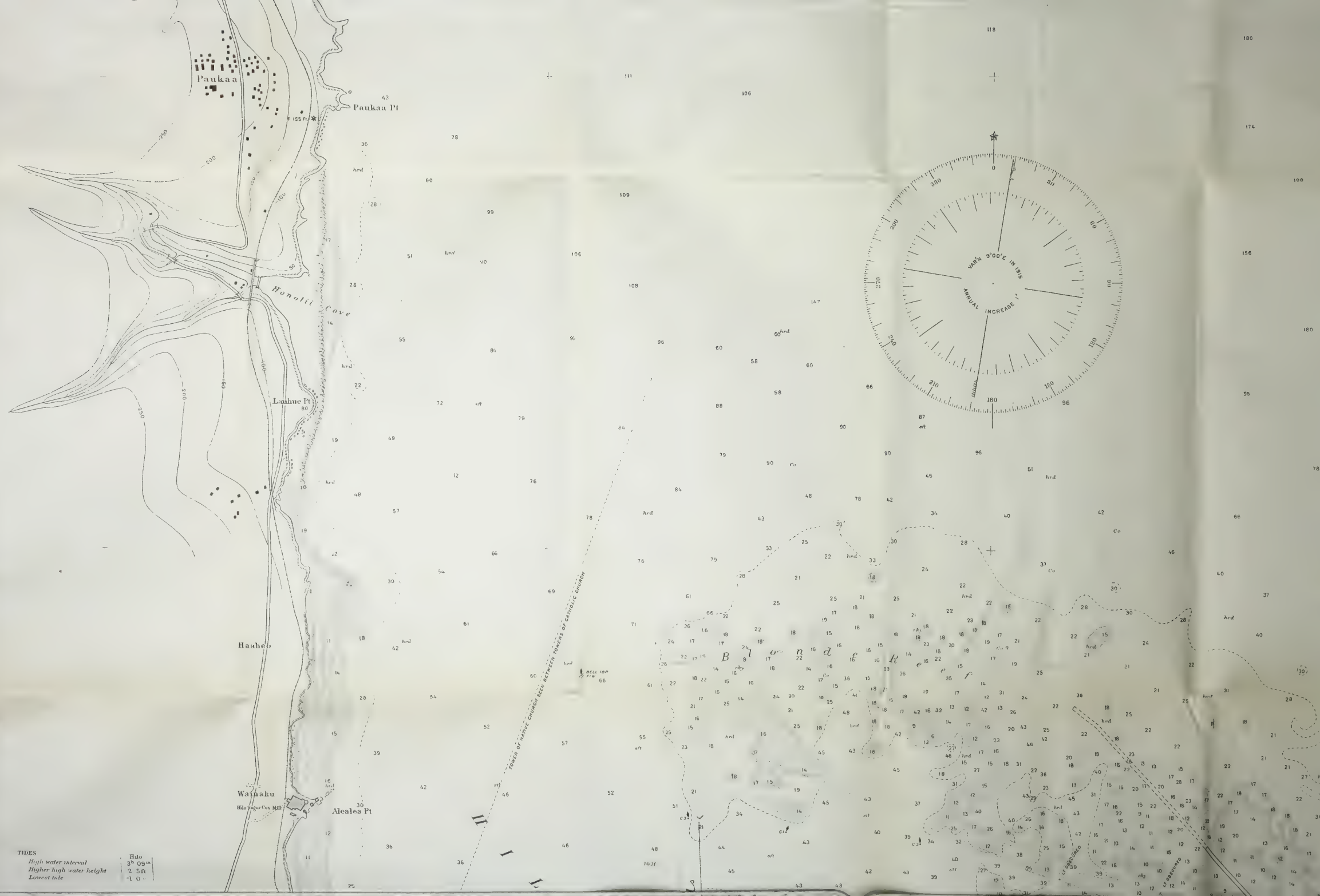
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156

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brk sh

42°





TIDES
 High water interval 3^h 09^m
 Higher high water height 2.5 ft
 Lowest tide -1.0

No. 139
 United States District Court
 Territory of Hawaii.

INTER-ISLAND STEAM NAVIGATION CO.
 etc.

-vs.-

THE AMERICAN SCHOONER "HALEYON"
 etc.

LIBELLEES EXHIBIT #1.

Filed FEBRUARY 3, 1914.

A. E. MURPHY,

Clerk.

By

H. L. Davis
 Deputy Clerk.

△ Balai Beacon

ABBREVIATIONS

Lights F. fixed Fl. flashing, Occ. occulting W. white, R. red,
 Alt. alternating, Gp. group, Sec. sector, m. miles,
 min. minutes, sec. seconds, ev. every, vis. visible.
 Color white unless otherwise indicated
 Buoy C. can, N. nun, S. spar

M. mud, S. sand, G. gravel, Sh. shells, Co. coral, bk. black, gy. gray, dk. dark,
 hrd. hard, sft. soft, fne. fine, crs. coarse, rky. rocky, brk. broken, sml. small,
 P.D. position doubtful L.D. existence doubtful

HEIGHTS in feet above high water

686.9-983.7

06'

155° 05'

04'

LIBELLEES EXHIBIT No. 1.
 Chart of Hilo Bay

Washington, D.C.
 COAST AND GEODETIC SURVEY
 March 1915

LIGHTS, BEACONS, BUOYS, AND
 FOR INFORMATION RECEIVED

Identification
 W.R. Jan 31/14



15'05"

04'

258
mil SH

768
200 S. 100 S. 30

208

120

160

740

115

120

100 S. 100 S. 30

240

216

114
SH

118

114
100 S. 100 S. 30

132

120

118
100

88

142

166
100 S. 100 S. 30

86

100 S. 100 S. 30

160

100 S. 100 S. 30

126

138

118
AT

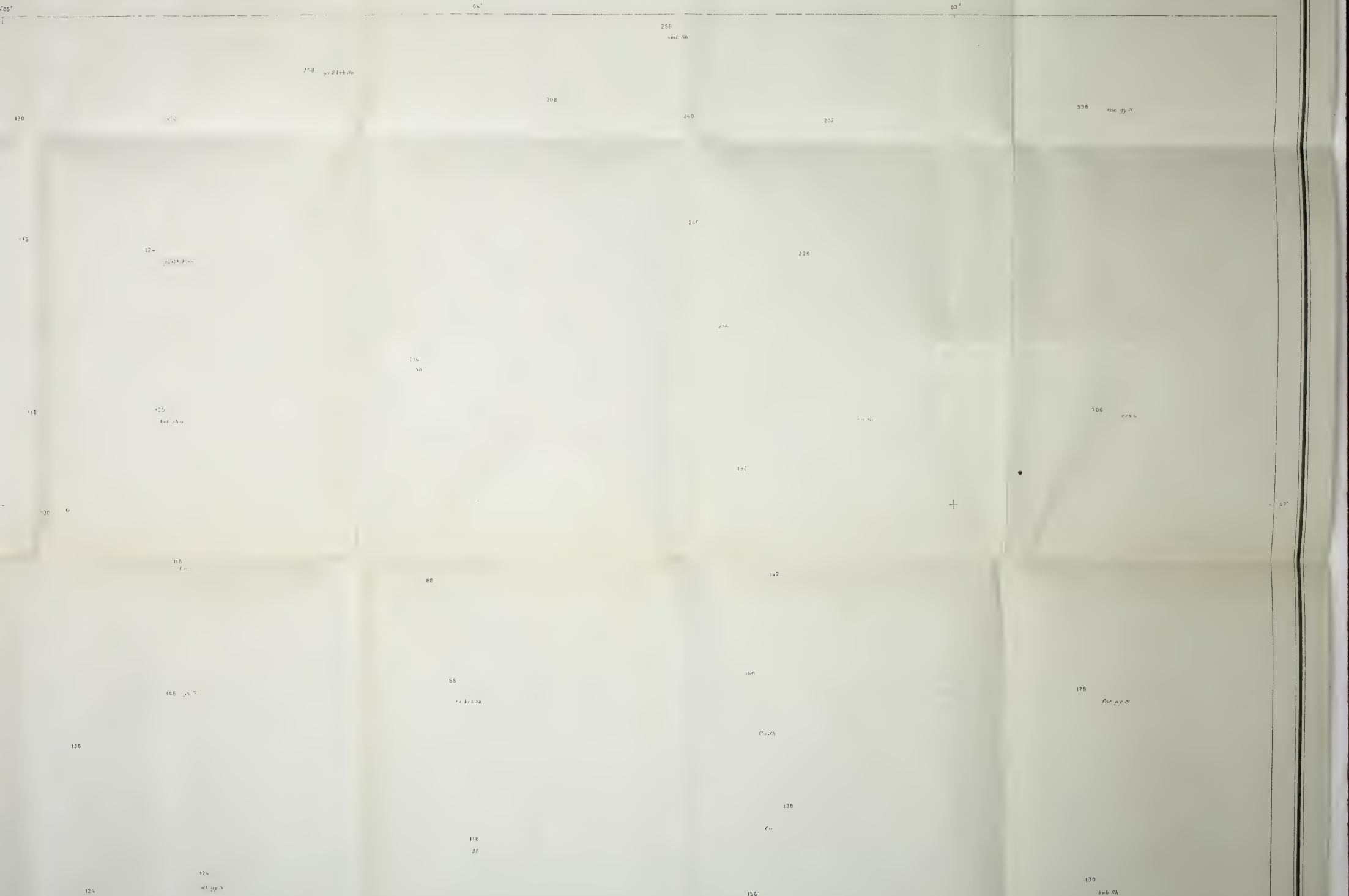
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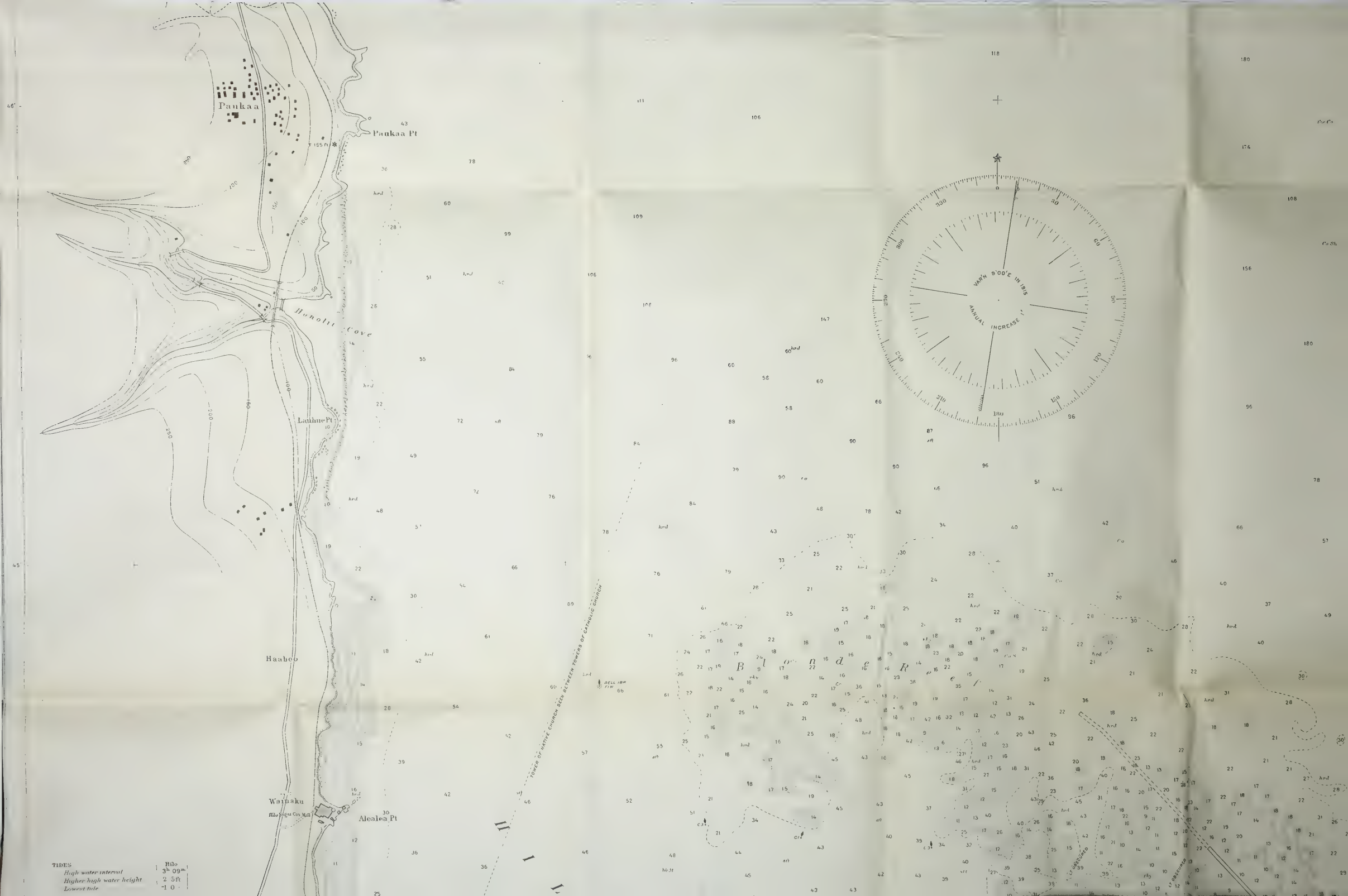
120

100 S. 100 S. 30

124

156





TIDES	Hilo
High water interval	3 ^h 09 ^m
Higher high water height	2.5 ft
Lowest tide	-1.0

TIDES
Hilo
High water interval 3^h 09^m
Higher high water height 2.5 ft.
Lowest tide 1.0

No 139.
United States District Court
Territory of Hawaii.

INTER-ISLAND STEAM NAVIGATION Co.,
etc.

-vs-

THE AMERICAN SCHOONER 'HALEYON', etc.

LIBELLEES EXHIBIT #2

Filed FEBRUARY 3, 1915.

A. E. MURPHY,

Clerk.

J. L. Love
Deputy Clerk.

B.

△ Island Beacon

ABBREVIATIONS

Lights F fixed, Fl flashing, Occ occulting, W white, R red
Alt alternating, Gp group, Sec sector, m miles,
min. minutes, sec seconds, ev every, vis visible
Color white unless otherwise indicated.
Buoys C can, N navigational, S spar

M mud, S sand, G gravel, Sh shells, Co coral, bk black, gy gray, dk dark,
hrd hard, st soft, fne fine, crs coarse, rky rocky, brk broken, smt small,
P D position doubtful, E D existence doubtful

HEIGHTS in feet above high water

686 g-263.7

06'

155° 05'

04'

LIBELLEES EXHIBIT No 2
Chart of Hilo Bay.

Washington, D.C.
COAST AND GEODETIC SURVEY
March 1915

LIGHTS, BEACONS, BUOYS
FOR INFORMATION ONLY

for identification
W.H.P. Jan 31/14

[Title of Court and Cause.]

Answer.

To the Honorable SANFORD B. DOLE, Judge of the United States District Court in and for the District and Territory of Hawaii.

The answer of J. A. T. Olsen, master and claimant of the schooner "Halcyon," and her cargo and freight money, to the libel and complaint of the Inter-Island Steam Navigation Company, Limited, against the said schooner, her tackle, apparel, machinery, boats, furniture, appurtenances, cargo and freight money, alleges as follows:

First. Answering the paragraph numbered "1" thereof, the claimant admits that at the times mentioned in said libel the libellant was a corporation organized under and existing under and by virtue of the law of the Territory of Hawaii, and was the owner of the steamer "Niihau."

Second. Answering the paragraph numbered "2" thereof, the claimant says that he is not informed as to the matters alleged in said article, and therefore does not admit the same, but leaves libellant to prove the same as may be advised. [148]

Third. Answering the paragraph numbered "3" thereof, the claimant admits that the said schooner "Halcyon" was a vessel of the tonnage of 293 tons, having three masts, and that the said schooner was laden with a cargo of lumber destined for the port of Hilo, but alleges that he is not informed of the value of said schooner nor of the value of the said cargo.

Fourth. Answering the paragraphs numbered "4," "5," "6" and "7" thereof, the claimant alleges that the matters therein set forth and alleged are in great part falsely stated, and that the truth is as hereinafter set forth, to wit:

That during the night following the 12th day of January, 1914, while the said "Halcyon" was lying moored to the Hilo side of the railroad wharf (so called) in said harbor of Hilo, secured by a head-line and a stern-line from starboard to the wharf and by lines on the port side to mooring buoy, the said head-line broke loose from said wharf by reason of the violence of the wind and sea then prevailing, and thereupon drove toward another schooner, to wit, the "Ka Moi," then moored alongside of said wharf immediately astern of the said schooner "Halcyon" and collided with the said "Ka Moi"; that in order to avoid serious damage to the said "Ka Moi," the claimant caused to be loosened the stern-line of said "Halcyon" from said wharf and the offshore line to the buoy was hauled taut, thereby clearing the said "Ka Moi" and the said "Halcyon" was thereupon held to said buoy by said line thereto and with her both anchors cast; that with her anchors so held and so moored to the buoy, the said "Halcyon" remained safely for several hours; that later as the sea roughened, the claimant observed the vessel very slowly dragging her anchors and ran another line to the said buoy; that while so moored to said buoy and notwithstanding the dragging of her anchors, the vessel was in no danger of drifting toward shore nor to the rocks nor reefs; that subsequently one of the lines to said

buoy parted, and thereupon [149] your complainant concluded, as a matter of precaution, to be towed out farther from shore and to be anchored at a greater distance from shore; that accordingly the claimant flashed the signals and about an hour thereafterwards he hailed some persons rowing in a small life-boat and stated to them that he desired a line for a tow; that sometime afterwards the said steamer "Niihau" gave said "Halcyon" a hawser for the purpose of being towed farther out from shore; that up to this time the said "Halcyon" had not been drifting toward shore and was at all times securely held to said buoy.

That thereupon the said "Halcyon" began to heave its anchors and in doing so one of said anchors was lost; that the said "Niihau" then proceeded to tow the said "Halcyon" away from said buoy and when such tow had proceeded a distance of 100 fathoms or thereabouts, the hawser broke; that thereupon the claimant caused the remaining anchor to be cast to await another tow-line; that the said anchor did not hold the vessel and consequently she drifted toward shore; that although more than an hour elapsed, during which time the said "Niihau" had sufficient opportunity to give the "Halcyon" another and additional lines, yet the said "Niihau" made no effort whatsoever to supply any line or give to the said "Halcyon" any assistance whatsoever, until when the claimant observed the vessel very close to the breakers and in danger of running ashore he hoisted the signals for immediate assistance, and it was only after the hoisting of said signals that the "Niihau" ren-

dered any further assistance, and thereupon the said "Niihau" supplied the said "Halcyon" with *two* line by means of which the said "Niihau" towed the vessel to a safe anchorage and held her away a considerable distance from shore.

That at none of the said times herein alleged was the said steamer "Niihau" or any of the persons thereon exposed to any risk or peril, and the services performed by the said "Niihau" or any [150] of the members of its crew were not of a salvage nature; that the drifting of the said "Halcyon" toward shore was caused solely and mainly as the result of the fault of said "Niihau" in providing a defective hawser, and at all events it was the duty of the said "Niihau" to have supplied other hawsers immediately upon the breaking of the hawser during the original tow, and at most the said libellant might be entitled to some fair compensation for towage by reason of and pursuant to the claimant's agreement for such towage.

Fifth. And the said claimant further answering, denies each and every allegation in said libel contained not consistent with the allegations herein alleged.

That all and singular the premises are true.

WHEREFORE, the claimant prays that said libel may be dismissed, with costs.

(Sgd.) HARRY IRWIN and
J. W. RUSSELL,
Proctors for Claimant.

Territory of Hawaii,
County of Hawaii,—ss.

J. A. T. Olsen, being duly sworn, deposes and says :

That he is the claimant mentioned and described in the foregoing answer; that he has read the foregoing answer and knows the contents thereof and the matters therein stated and set forth are true.

(Sgd.) J. A. T. OLSEN.

Subscribed and sworn to before me this 20th day of February, 1914.

[Seal] (Sgd.) S. S. ROLPH,
Notary Public, Fourth Judicial Circuit, Territory
of Hawaii. [151]

[Endorsed]: No. 139. (Title of Court and Cause.)
Answer. Filed February 24, 1914. A. E. Murphy,
Clerk. By (Sgd.) F. L. Davis, Deputy Clerk. [152]

Minutes of Court—August 16, 1915.

(PROCEEDINGS AT THE TAKING OF TESTI-
MONY OF SIX WITNESSES ON BEHALF
OF THE LIBELLANTS.)

(DOLE, Presiding Judge.)

From the Minutes of the United States District
Court: Monday, August 16, 1915, Vol. 9, part 2,
Folio 754.

[Title of Court and Cause.]

On this day came Mr. L. J. Warren of the firm of
Smith, Warren & Sutton, proctors for the above
libellants and also came Mr. J. W. Russell, proctor for
the libellee herein and this cause was called for fur-
ther hearing. Thereupon Frank Carlson, Moki,
Manuel Lacerdo, Kaimi, Ralph Balding and R. W.
Filler were called and sworn and gave testimony on
behalf of the libellants, whereupon the time for ad-

jourment having arrived, it was by the Court ordered that this cause be continued to August 17, 1915, at 10 o'clock A. M., for further hearing. [153]

Minutes of Court—August 17, 1915.

(PROCEEDINGS AT THE TAKING OF THE
TESTIMONY OF FOUR WITNESSES ON
BEHALF OF THE LIBELLANTS.)

(DOLE, Presiding Judge.)

From the Minutes of the United States District
Court: Tuesday, August 17, 1915, Vol. 9, part 2,
Folio 755.

[Title of Court and Cause.]

On this day came Mr. L. J. Warren of the firm of Smith, Warren & Sutton, proctors for the libellants and also came Mr. J. W. Russell, proctor for the libellee and this cause was called for further hearing. Thereupon H. P. Morton, W. F. Thompson, Capt. W. C. Bruhn and F. Mosher were called and sworn and gave testimony on behalf of the libellants, whereupon the time for adjournment having arrived it was by the Court ordered that this cause be continued to August 18, 1915, at 10 o'clock A. M., for further hearing. [154]

Minutes of Court—August 18, 1915.

(PROCEEDINGS AT THE TAKING OF THE
TESTIMONY OF WITNESSES ON BE-
HALF OF THE LIBELLANT AND LI-
BELLEE.)

(DOLE, Presiding Judge.)

From the Minutes of the United States District
Court: Wednesday, August 18, 1915, Vol. 9, part
2, Folio 756.

[Title of Court and Cause.]

On this day came Mr. L. J. Warren of the firm of
Smith, Warren & Sutton, proctors for the libellant
and also J. W. Russell, proctor for the libellee herein,
and this cause was called for further hearing.
Thereupon Captain W. C. Bruhn gave further testi-
mony on behalf of the libellants and David Hao, Jr.
was called and sworn and also gave testimony on be-
half of the said libellants. Thereupon libellants
having closed their case subject to the taking of fur-
ther testimony in Honolulu, R. W. Filler was re-
called and John D. Easton called and sworn and gave
testimony on behalf of the libellee, whereupon the
time for adjournment having arrived it was by the
Court ordered that this cause be continued to Thurs-
day, August 19, 1915, at 10 o'clock A. M., for further
hearing. [155]

Minutes of Court—August 19, 1915.

(PROCEEDINGS AT THE TAKING OF THE
TESTIMONY OF TWO WITNESSES ON
BEHALF OF THE LIBELLEE.)

(DOLE, Presiding Judge.)

From the Minutes of the United States District
Court: Thursday, August 19, 1915, Vol. 9, part
2, Folio 757.

[Title of Court and Cause.]

On this day came Mr. L. J. Warren of firm of
Smith, Warren & Sutton, proctors for the above
libellants and also came Mr. J. W. Russell, proctors
for the libellee herein, and this cause was called for
further hearing. Thereupon A. Duvel and E. F.
Nichols were called and sworn and gave testimony on
behalf of the libellees, whereupon it was by the Court
ordered that this cause be continued until called for
hearing. [156]

Minutes of Court—September 14, 1915.

(PROCEEDINGS AT THE TAKING OF THE
TESTIMONY OF TWO WITNESSES ON
BEHALF OF THE LIBELLANT.)

(DOLE, Presiding Judge.)

From the Minutes of the United States District
Court: Tuesday, September 14th, 1915, Vol. 9,
part 2, Folio 791.

[Title of Court and Cause.]

On this day came Mr. L. J. Warren of the firm of
Smith, Warren & Sutton, proctors for the libellant

herein, and also came Mr. J. W. Russell, on behalf of the above libellee, and this cause was called for further hearing, whereupon A. S. Cantin and L. Paulos were called and sworn and gave testimony on behalf of the libellant at the conclusion of which both sides having closed it was by the Court ordered that said case be submitted on briefs. [157]

[Title of Court and Cause.]

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[Title of Court and Cause.]

Before the Honorable SANFORD B. DOLE, Judge
of said Court.

Transcript of Testimony.

Hilo, T. H. August 16, 1915.

Testimony of F. O. Carlson, for Libellant.

Direct examination of F. O. CARLSON, a witness
on behalf of Libellant, called and sworn.

Mr. WARREN.—At this time, if the Court please,
counsel in the case have agreed to stipulate the fol-

(Testimony of F. O. Carlson.)

lowing points in this case, namely: That as to values of the vessel and the cargo, the schooner "Halcyon" and cargo, the total value of the cargo with freight, etc. is \$6,381.85; the schooner "Halcyon," \$1500 making a total of \$7,881.85.

Mr. RUSSELL.—With regard to the cargo, the amount stated includes insurance.

Mr. WARREN.—Yes.

Mr. RUSSELL.—And freight. [160]

Mr. WARREN.—Q. Captain, you were second mate of the steamer "Niihau" in the month of January, 1914 at the time the schooner "Halcyon" got into trouble in Hilo Bay? A. Yes, sir.

Q. And will you state what was the first knowledge that you had on board the steamer "Niihau" that night or early that morning that the steamer was in distress and wanted assistance; the schooner was in distress? About what time?

A. Just about four o'clock.

Q. How was that information received?

A. The boat's crew come off with the purser and notified the captain that the schooner "Halcyon" was ashore off the mouth of Waieka River and wanted assistance.

Mr. RUSSELL.—I move, if the Court please, to strike out the testimony of the witness with regard to the conversation as being hearsay.

The COURT.—I will overrule the objection.

Mr. RUSSELL.—Exception.

Q. The purser reported the steamer wanted assistance, the schooner wanted assistance?

(Testimony of F. O. Carlson.)

A. Yes, sir.

Q. What then was done on board the "Niihau"?

A. The captain notified the engineers to get ready.

Q. Then what?

A. The engineers said they were ready.

Q. What was done?

A. We immediately hove up our anchors and moved further in towards the schooner.

Q. At that time where was the "Niihau" lying?

A. We were laying well out to the end of the Hilo railroad wharf.

Q. And about how far from the wharf?

A. I couldn't say exactly how far we were out.

[161]

Q. Approximately.

A. I don't know. We were lying in a safe anchorage. That's all I know.

Q. And where did the "Niihau" go in order to get in position to assist the schooner?

A. We steamed in in a line with the railroad wharf between the moorings and the wharf.

Q. I don't follow you. You steamed in?

A. Steamed in between the railroad wharf and the two moorings, two breast-line moorings where the ship hangs on to.

Q. Then what did she do?

A. She dropped her anchor, two anchors and *paud* our chains out; ninety fathom on each chain.

Q. And how did she approach the "Halcyon"?

A. Then we took a coil of six-inch line in the ship's

(Testimony of F. O. Carlson.)

boat, the same boat that come alongside in the morning, and bent a four-inch line on to this six-inch line.

Q. And then did what?

A. Sent it on to the schooner "Halcyon."

Q. How did that boat go to the "Halcyon" from the steamer?

A. She was slacking herself in, right straight in.

Q. Slacking in?

A. Slacking herself away on the line.

Q. And personally what do you know of what was done with that rope? A. It was—

Q. Was anything done until the steamer's boat got back?

A. They took the end of the six-inch line on board and made it fast and the boat hauled herself on the line and reported that the line was fast.

Q. Then what did the "Niihau" do?

A. We took the four-inch line and took it to the windlass forward on the fo'c's' le-head and hove tight till we got the six-inch line aboard.

Q. Then what?

A. And then the captain told me to heave up the anchors, two anchors at the same time and also went [162] full speed ahead with the engine.

Q. And you did so? A. And he did so.

Q. Then what further?

A. Then when we got about abreast of the railroad wharf, at the end of the railroad wharf—

Q. "We" meaning what?

A. That is the captain of the "Niihau."

Q. Then what?

(Testimony of F. O. Carlson.)

A. The captain of the schooner threw up his hands in this position. (Indicating.)

Mr. WARREN.—Witness making a motion of throwing both hands outward.

Mr. RUSSELL.—That is objected to unless it appears he saw that.

Mr. WARREN.—Q. Did you see that?

A. No, I didn't see it.

Mr. WARREN.—No objection to its going out.

Q. Do you know personally how long that towing continued and when it stopped?

A. I couldn't say, Mr. Warren. I was busy on the fo'c's' le-head forward there and there was not time to look.

Q. When the "Niihau" got to that position you have stated, about off the end of the wharf, that's where you say the towing stopped?

A. I was told to let go the anchors.

Q. Where was the "Halcyon" at that time?

A. She was just about in a line with the railroad wharf at the other end.

Q. Then what happened to the line?

A. I was told from the captain to heave in the line.

Q. And hove it in?

A. Yes, after we let go the anchor.

Q. Was the line then fast to the schooner?

A. No, the line was gone.

Q. Do you know how it had become loose?

A. I didn't see it.

Q. Do you know what the schooner did?

A. She dropped her anchor. [163]

(Testimony of F. O. Carlson.)

Q. What then did the "Niihau" do?

A. We steamed a little further ahead and anchored.

Q. Now, after that did you observe the "Halcyon" at all?

A. Well, we were watching her there, looking at her; didn't see anything wrong.

Q. About what time of the morning was it that the schooner anchored as you have stated, when the line was gone?

A. About six-thirty; between six-thirty or seven o'clock, I should judge. I had no time to look at the time.

Q. In that neighborhood?

A. Beg pardon.

Q. In that neighborhood? A. Yes.

Q. And you watched the schooner there. What did you observe? What is the first thing you observed about her?

A. Watching the schooner there she seemed to be all right; nothing wrong with her.

Q. Did you later observe anything that appeared to be wrong?

A. Later I noticed that she was dragging her anchor.

Q. How long was it before you came to that conclusion?

A. About eight o'clock, I should judge; half-past seven or a quarter to eight. I couldn't tell exactly about the time. Between seven and eight o'clock or so.

Q. Prior to that time had she seemed to you to be

(Testimony of F. O. Carlson.)

dragging or going in?

A. No, I didn't pay no attention. I naturally thought she was paying her chain out.

Q. Well, you did observe that she was moving in some?

A. No, I didn't see that she was moving any.

Q. When you did observe she was moving what was done? A. I had orders—

The COURT.—Just a moment. You said you saw she was dragging between seven and eight o'clock, didn't you? A. No, I don't know. [164]

Q. Then you didn't see her moving in at all?

A. No, I didn't see she was dragging her anchor.

Mr. WARREN.—Q. When did you notice that she was?

A. About eight o'clock or so; little before eight.

Q. Having observed that, what did the "Niihau" do?

A. We immediately hove up our anchors again; that is, the captain notified the engineers to get ready with the engine, and hove up her anchor and move away inside.

Q. Up to that time and between that time and when the "Halcyon" had dragged her anchor, did you observe any signals of any sort on the "Halcyon"?

A. None whatever, there were no signals.

Q. Did you at any time that day observe any signals displayed from the Halcyon?

A. There were signals, distress signals hoisted up after the line was in the boat; after we moved inside with the "Niihau."

(Testimony of F. O. Carlson.)

Q. The first or second time?

A. The second time.

Q. Yes. All right. And when the "Niihau" moved to assist her the second time where did she go? What course did she take to get there?

A. She drifted right in. There's an old boiler somewhere on the beach there. She seemed to take a bee-line straight in there.

Q. Which, the "Niihau"? A. The schooner.

Q. Are you familiar with the government map of Hilo Bay? A. Well, pretty fairly.

Mr. WARREN.—I call the witness's attention to Libellee's Exhibit 1 which is on file and ask you, Captain, if you can indicate on this chart of Hilo Bay, the location of the steamer "Niihau" as she lay anchored the first time that night before you went to the assistance of the vessel the first time that night. Step to the chart, please. (Witness steps off stand in front of exhibit.) [165] With this blue crayon will you make a mark on this chart to indicate the position of the "Niihau" as she lay that night when she first appeared to be in trouble?

The COURT.—Make a little cross.

Mr. RUSSELL.—May I ask the witness to be cautioned not to be influenced by any marks that are on the map.

Mr. WARREN.—Yes, pay no attention to any marks that are on the map now. Now, don't pay any attention to other marks.

A. I just want to know where the buoy of the "Enterprise" is.

(Testimony of F. O. Carlson.)

The COURT.—Those other pencil marks have nothing to do with it.

A. It is pretty hard, your Honor, to put down exactly where we were lying that night.

The COURT.—Not exactly; as near as you can.

(Witness marks on exhibit.)

Mr. WARREN.—Will you mark that N-1?

(Witness marks on exhibit.)

Q. Now, will you mark on this map the position of the schooner “Haleyon” that night as she lay when the line was first sent to her?

A. I couldn’t say exactly.

The COURT.—In making a line representing a schooner, you ought not to make a cross but a long line which would be the approximate length of the schooner with a little arrow to show the bows.

Mr. WARREN.—Do you know what direction she was lying from the “Niihau”?

A. She was lying right in here.

Mr. WARREN.—Indicating a line toward where?

A. Into the piles off the breakwater, Waiakea River?

Q. The piles at Waiakea River?

A. There is a line of piles there.

The COURT.—Piles off the breakwater?

A. It is kind of a breakwater. The piles are there to guide the scows.

Q. These were the piles on which side?

A. On the left side; the left side going in. [166]

Q. Left side going in where?

A. Going in towards the River, Waiakea. No,

(Testimony of F. O. Carlson.)

right side. I beg your pardon.

Mr. RUSSELL.—The piles are on the Hilo side of the Waiakea River.

Q. And could you judge about how far the schooner was from the "Nihau" when the line had been put on her deck that night? A. That's pretty hard telling.

Q. How long was the line that you had?

A. The six-inch line were six hundred feet; 120 fathoms.

Q. Now, will you mark on this map the position that the "Niihau" took after the first towing was over when you say that the schooner dropped her anchor and the "Niihau" proceeded a little and dropped her anchors. Mark that as nearly as you can, the "Niihau". A. The course that we took?

Q. The position you were in when you dropped your anchors.

A. When we dropped our anchors?

Q. After that first tow.

A. Not the schooner, just the "Niihau"?

Q. The "Niihau."

A. After we dropped the schooner or before we dropped the schooner?

Q. After you dropped the schooner and when you dropped your anchors.

A. We dropped the anchors about the same position as here now.

Q. N-1. Now when you moved this second time from N-1 and went to the assistance of the schooner, the second time; where did the "Niihau" go then? Can you mark that upon the map, about the position

(Testimony of F. O. Carlson.)

she was in when she sent the line the second time?

A. (Witness marks.) What do those represent there, Mr. Warren?

Mr. WARREN.—Pay no attention to these pencil marks on the map. Mark a short line with an arrow.

(Witness marks on exhibit.)

Mr. WARREN.—We will mark this N-2.

A. No, I beg your pardon, that's not right.

Mr. WARREN.—Any objection to erasing it?

Mr. RUSSELL.—Not at all. (Mr. Warren erases, witness marks anew.) [167]

A. That's pretty near as I can get it.

Mr. WARREN.—Yes. We will now mark that N-2.

Q. Now, with the "Niihau" at N-2, where was the schooner?

A. The schooner must have been in somewhere just about in here.

Q. Will you mark that as closely as you can fix it to your best judgment?

A. (Witness marks.) Can I take that off again?

The COURT.—Yes. Give the length of the ship so that we know which way she's pointing. (Witness marks.)

Mr. WARREN.—Which you will mark H-2. There is no H-1; that's H-2. Now, the "Niihau" having taken that position of N-2 for the second tow, what was done by the "Niihau"?

A. We dropped our anchors.

Q. How many?

A. Two anchors, and paid out ninety fathom chain

(Testimony of F. O. Carlson.)

with each anchor then sent the boat in with the line to the schooner "Halcyon."

Q. In paying out anchor chain, how did your vessel move and what caused her to move?

A. The wind and sea moved her back.

Q. Toward what?

A. Towards the "Halcyon"; towards the beach.

Q. Now, you have mentioned a black boiler on the beach: will you mark the location of that as nearly as you can on this map?

A. Just about in the back of the schooner "Halcyon" here, on the beach; it's pretty hard to tell exactly where.

Q. Mark a cross on the beach indicating the position of that boiler as best you can?

A. (Marks cross.) Is that the beach mark along here.

Mr. RUSSELL.—He's got that marked on the railroad tracks.

A. Then if I get permission to take that off?

The COURT.—Yes. (Witness marks on exhibit.)

Mr. WARREN.—The position of the "Halcyon" is right? A. Yes. [168]

Q. Now, you have again made a cross where you think is more nearly the position of the boiler?

A. Yes.

Q. When the "Niihau" arrived at N-2, you say she sent her line in the boat. How did the boat carry the line over?

A. They slacked themselves in on the line and we have a heaving-line bent on to the six-inch line and

(Testimony of F. O. Carlson.)

they threw it aboard just about two or three boat lengths from the schooner.

Q. The steamer boat? A. The steamer boat.

Q. Now, where was the steamer boat with that line at the time you observed the distress signal go up?

A. About half way between the steamer "Niihau" and the schooner "Halcyon."

Q. Now, how long after, approximately, the flags went up was the line thrown on board?

A. A short time after.

Q. How long?

A. I couldn't say exactly. It wasn't very long.

Q. Approximately how many minutes, more or less.

A. Couldn't be more than may be five or six minutes.

Q. And how much longer before it was made fast?

A. It was about the same amount, I should judge; six or ten minutes or so.

Q. That line having been made fast on the "Halcyon," what did the "Niihau" do?

A. We took and hove her tight and got the six-inch line in.

Mr. RUSSELL.—What?

Q. Got the six-inch towing-line aboard the ship and made it fast. Then we started to heave up our anchors and steamed full speed ahead at the same time.

Q. And at that time what angle or relative position did the schooner have to the shore-line?

A. About heading towards Hilo Sugar Co's mill, the bow.

Q. And do you know whether or not the schooner

(Testimony of F. O. Carlson.)

touched the bottom [169] at all? Could you judge of that as you observed her?

A. I don't know whether she did or not, but she churned up an awful lot of sand where she was.

Q. From the "Niihau," how much of her could you see either one side or the other?

A. Could only see one side, was the starboard side.

Q. How many lines did you put on the "Halcyon" the second time?

A. We put on a six-inch line and seven-inch line.

The COURT.—This is the second time?

Mr. WARREN.—Yes, the second time. How long was it between the time you put on the six-inch line and the seven-inch line? What did you do between times?

A. We hove in the slack of the six-inch line to get the strain on it; then we ran the other line on.

Q. Then what did you do with the schooner?

A. Made fast all lines and got orders from the captain to heave in the anchors and engines going full speed ahead at the same time hauling her off slowly; an awful strain on the lines.

Q. And what else?

A. Then we towed her out and the pilot or harbor-master came along; made a motion. I presume to the captain, and we dropped our anchor. The pilot was aboard the "Halcyon" at that time.

Q. Now, will you indicate on this map the position of the "Halcyon" at the time the pilot motioned to you to stop towing?

(Witness marks on exhibit.)

(Testimony of F. O. Carlson.)

Mr. WARREN.—Which position we will mark H-3. At H-3 what did the schooner do?

The COURT.—That's the schooner?

Mr. WARREN.—Schooner "Halcyon," what did she do then?

A. She dropped her anchor.

Q. How many anchors? Do you know?

A. Just one anchor. [170]

Q. And then what?

A. And then the harbor-master came alongside with the captain of the schooner.

Q. Who is the harbor-master?

A. Captain Mosher.

Q. The same one as you've mentioned as the pilot?

A. As the pilot. He's harbor-master, not pilot.

Q. Came alongside?

A. With a gasoline launch.

Q. From the "Halcyon"?

A. From the "Halcyon."

Q. Then what?

A. Captain Mosher, the harbor-master, said, "This is the captain of the schooner," to Captain Bruhn.

Q. You heard this? A. Yes, I heard it.

Q. What did he say?

A. He said the captain had only one anchor. He said he lost one anchor and, "I only got one left and I'm afraid my chain going to carry away."

Mr. RUSSELL.—What captain said this? Captain of the "Halcyon"? Who said that, the pilot or Captain Olson?

A. Captain Olson as far as I recollect it.

(Testimony of F. O. Carlson.)

Q. What else?

A. And he wanted us to stay by and hold on to him with a line and Captain Bruhn said, "All right," he says, "Let go my line. I've got to change my position." And Captain Bruhn hove up the anchor of the steamer "Niihau" and moved himself little further out and ran the line to the schooner again with a small ship's boat and made her fast on board and we hove her taut aboard the steamer and kept it up.

Q. How any lines that time?

A. Two lines I think it was.

Q. How long did you keep hold of her with those two lines?

A. We kept all that day up to next morning; all night. All that day, all night, up to next morning and the weather quieted.

Q. Now, will you mark on that the position the steamer "Niihau" had as she lay that day and the next night?

(Witness marks on exhibit.)

Mr. WARREN.—Which position we will mark as M-3. Now, I want to [171] ask you at the time the small boat came from the "Halcyon" to the "Niihau" and reported the steamer in distress, what was the condition—

The COURT.—That was the first intimation?

Q. First time, first information. What was the condition of the weather, wind, and sea?

A. Strong wind and heavy; blowing hard and

(Testimony of F. O. Carlson.)

heavy sea piling up; northerly wind and heavy swell running.

Q. Can you give the wind? Northerly, you say. Any substantial difference in direction between the wind and sea?

A. No, the wind and sea came the same direction.

Q. Can you judge of the velocity or force of the wind that night at that time?

A. I should judge blowing between forty and fifty miles an hour; may be heavier than that.

Q. And how long did that condition continue?

A. Continued all that day; all day the next day after we got the schooner off, and all that night.

Q. Between that hour when the small boat came with the first information and the morning hours, say around seven or eight o'clock, or next morning, was there any change?

A. If there was any change it was for the worse; the wind was increasing.

Q. Were there any breakers in the bay then?

A. Yes, it was breaking in the bay and very heavy swell running.

Q. At the time the "Halcyon" was in the position which you have marked on this map as H-2, near that cross representing the boiler, did you observe how many lines of breakers there were between the schooner and the beach?

A. About five or six as near as I could judge.

Q. And outside of the schooner, were there any breakers?

A. Yes, it was breaking. The sea and the break-

(Testimony of F. O. Carlson.)

ers went clear over the schooner and over her deck-load.

The COURT.—Where is that? H-3? [172]

Mr. RUSSELL.—H-2.

Mr. WARREN.—H-2. When the small boat left the "Niihau" for that second time to reach the schooner at H-2, did you observe the small boat as it proceeded and how it managed to get there with the weather conditions?

A. They were slacking themselves away on the line; you see, we paid out all line; they had all the six-inch line in the boat and the four-inch line was bent on, made fast to the six-inch line and we paid out our four-inch line till we thought that it would be enough, then the boat's crew when they got two boat lengths or three, they threw the heaving-line on board; they couldn't get alongside her.

Q. When the "Niihau" began heaving on the "Halcyon" when she was at H-2, that is, the second time, how did she come and how did the "Halcyon" move?

A. We hove in on the line very slow, watching our chance; every time the line got taut, stopped. When the schooner rolled over, she was lying this way on the beach, and churned the sand up; the sand was all churned up around her. We were watching our chance and heaving in very slow on them lines little by little, inch by inch.

Q. Were you doing any steaming on the "Niihau"?

A. Not before we got the six-inch line on board. When we got the end on board then we made fast and

(Testimony of F. O. Carlson.)

then we steamed; hove up the anchors and steamed full speed ahead at the same time.

Q. The six-inch line was the only line you put on?

A. As soon as we got the six-inch line on. That's the second time?

Q. Yes. A. We run the seven-inch line.

Q. Did you begin to steam before you got the seven-inch line? A. No.

Mr. WARREN.—Cross-examine.

Cross-examination.

Mr. RUSSELL.—Q. You are addressed as Captain?

A. I'm captain of the steamer "Kaiulani" at the present time. [173]

Q. And that is an Inter-Island boat? A. Yes.

Q. And when you first received word from the purser who was in the life-boat, had you previously seen flare up lights on the "Halcyon"? A. No.

Q. Did you see afterwards?

A. No, I didn't see any. I didn't have time to look around, I was so busy getting ready.

Q. Now, when you went, when you neared the "Halcyon," how far, do you recall, had you gone before you sent the six-inch line to her?

A. How far we went in with the steamer?

Q. Yes, how far had the "Niihau" gone toward the "Halcyon" the first time?

A. I judge we were about six hundred feet away from her, I should judge, or little over.

Q. Well, you didn't go the full six hundred feet?

A. We were probably about six hundred feet.

(Testimony of F. O. Carlson.)

Q. You were that far from her at the time?

A. Oh, no. We were further away; we were lying to our anchors outside.

Q. So you came within six hundred feet of her?

A. We lift up our anchor and steamed closer in.

Q. How far had you gone?

A. I don't know exactly. We were lying over here at the end of the railroad wharf, eight hundred feet long; we laid outside of the railroad wharf. We were lying to our anchor over here somewhere and we steamed in along here until we got in. She was in here at Waiakea River. We dropped our anchors about here; slacked in gradually.

Q. When you first came was it daylight?

A. It was dark; you couldn't see your hand; it was very dirty and heavy.

Q. How can you tell she was near the piles if it were so dark?

A. We were told by the purser that she was in the mouth of the Waiakea River. [174]

Q. And you were told that when he first came and told you that the "Halcyon" wanted a line?

A. Yes.

Q. Of your own knowledge you don't know?

A. I couldn't say whether she was at the mouth of the Waiakea River or anywhere else, but she was inside the schooner "Ka Moi." She was further inside of the schooner "Ka Moi."

Q. The schooner "Ka Moi" was up toward the end of the railroad wharf?

A. The entrance to the railroad wharf.

(Testimony of F. O. Carlson.)

Q. When you took your first course to the assistance of the "Halcyon," you went on a line practically straight with the railroad wharf?

A. Probably a little bit further over to keep clear of the four breast-line moorings. There is four of them.

Q. That's a course that is usual with some of the Inter-Island boats when they come up to the wharf, that the boats on either side of that wharf?

A. Yes.

Q. And the course that you took was right straight on a course that is sometimes taken by the Inter-Island boats when they come up to take on their loads?

A. We have to come in this way and swing on our anchor on the Hilo side of the wharf when we want to come. That's the way I'm doing it. I come up straight like that and drop my anchor and steam alongside.

Q. And you have seen boats come in this way and come alongside? A. Come right in here.

Mr. WARREN.—Toward the Hilo side of the wharf.

Mr. RUSSELL.—Q. Was that the course that you took the first time you went to the assistance of the "Halcyon"? That was not an unusual course for any steam vessel to take at that harbor?

A. Not in daytime, but it would certainly be at any other time unusually dangerous.

Q. Who was captain of the—

(Testimony of F. O. Carlson.)

A. Captain Bruhn. [175]

Q. And you had been with Captain Bruhn for some time?

A. I had been with him for just about a month.

Q. You don't know how familiar he was with that harbor?

A. I presume he's just as familiar; been running up here for years.

Q. Now, could you see the wharf from where you were when you went in to the "Halcyon"?

A. Couldn't see nothing; couldn't see your hand before you.

Q. How, then, do you know your position as you have indicated it?

A. You could tell by the range light, the red light.

Q. The red light from where?

A. That is on the end of the wharf, the range light coming in.

Q. That is on the sea end of the wharf?

A. Not the sea end, but the shore end.

Q. The shore end of the wharf? A. Yes.

Q. Did you make any particular observation of that red light?

A. That's the one thing we had to go by, sir.

Q. Did you, yourself?

A. Yes, I could see the light there myself, but I was so—

Q. Yes?

A. I was so busy I didn't pay much attention to it; all I could do was attend to my anchors.

Q. You had nothing to do with regard to giving

(Testimony of F. O. Carlson.)

of instructions as to where or how that boat was to steam in? A. No. That is—

Q. You had nothing to do with that? A. No.

Q. Captain Bruhn was attending to that and you weren't watching where you were going?

A. You naturally are; you're mate on board of the ship. If I thought Captain Bruhn got too close to the wharf or any obstruction, I'd notify him.

Q. That would be the duty of the anchor man?

A. That would be the duty of the mate, not the anchor man. [176]

Q. Duty of anybody?

A. Some of them won't do it. It's up to the officers.

Q. They all ought to give notice to the officers of dangerous obstructions?

A. I presume they'd tell.

Q. You say you were so busy you weren't paying any attention?

A. I was tending to my work on the fo'e's'le-head; everything was ready then I was waiting for orders from the captain to let go my anchors.

Q. Now, after this boat left, life-boat proceeded to the "Haleyon" with the six-inch hawser; that is, they had the end of the six-inch line and that was being give to them as they went towards the "Haleyon," is that right?

A. With a four-inch line bent on to the six-inch.

Q. Then when they returned and reported that the six-inch line was fast, you proceeded to go out?

A. No, we had to heave the line taut; we took the

(Testimony of F. O. Carlson.)

line to the windlass, the four-inch line and heaved in on it.

The COURT.—Who are you talking about now?

A. That is the first time.

Q. The line of the vessel?

A. The steamer's anchor.

Q. It was her windlass? A. Her windlass.

Q. Hove on the six-inch line?

A. Not the six-inch line, the four-inch line.

Q. Then they had the entire line in the boat?

A. They had the entire line, the six-inch line, in the boat.

Q. Then you had your four-inch line attached to that and then that four-inch line was helping the boat back?

A. That boat had on the four-inch line so he could get the line fast aboard the schooner.

Q. So you took your end of the six-inch line and put it on the windlass?

A. We took the four-inch line to the windlass.

[177]

Q. And finally got the six-inch line on the windlass too? A. Yes.

Q. How long was that six-inch line?

A. 120 fathoms.

Q. How much did you have on the windlass?

A. Just enough there to make fast to the bit aft.

Q. How much of that six-inch line did you have aboard at the time she was tight?

A. It's pretty hard telling how much there was aboard. It was a dark night.

(Testimony of F. O. Carlson.)

Q. What is your best judgment? Ten fathoms?

A. Oh, we had more than that.

Q. Twenty fathoms?

A. Call it about ten fathoms. Enough to make fast to the bits aft.

Q. So then there would approximately about 110 fathoms of line out to the "Halcyon"?

A. How much?

Q. 110 fathoms?

A. About that, yes. No there wasn't because it took some line to get the turn around the mainmast of the "Halcyon" to make fast.

Q. How many fathoms would be required ordinarily?

The COURT.—For what?

Mr. RUSSELL.—Around the bit of the "Halcyon."

A. I couldn't say exactly. I couldn't say exactly how much it would take to make her fast there.

Q. Now, then, after you had gone out into the— Oh, when you began towing the "Halcyon," how far had you gone before the tow stopped?

A. Oh, we towed her over 800 feet; the whole length of the railroad wharf from the mouth of the Waiakea River up to the end of the wharf. I don't know exactly how long that should be.

Q. What were you doing at the time the tow stopped?

A. After we got her out? I don't understand that question. [178]

Q. At the time that the tow stopped, what were

(Testimony of F. O. Carlson.)

you, yourself, doing?

A. I was on the fo'c's'le-head all the time; never left there.

Q. And of your own knowledge you don't know how that tow stopped? You didn't see it?

A. No, I did not see it.

Q. Did you see the tow-line being hove in?

A. I hove that tow-line myself. I had orders from the captain to heave in the tow-line after I dropped the anchor.

Q. You did that yourself? A. I was right there.

Q. What is that?

A. With the anchor man and the donkey man and myself.

Q. Now, how much line did you heave in?

A. I hove the whole length of the line in. I judge about thirty fathoms were cut off or chaffed off, I couldn't say. I don't know.

Q. So that when you got your line hove in you found that of the 120-fathom line you had perhaps only about forty fathom left.

A. No, we didn't find that out, before the next day. We only know that the line was cut off. We could see that the line was cut off or chaffed off.

Q. All you know is that the line parted?

A. The line was parted, yes.

Q. How much line did you find that you had? You *say didn't* notice until next morning? Now that morning how much line did you have?

A. Which the long piece or the short piece.

Q. The piece that you took out.

(Testimony of F. O. Carlson.)

A. All but what she left on board the schooner.

Q. How many fathoms was that?

A. I didn't measure that. I should judge about thirty fathom; not any more.

Mr. WARREN.—That he lost or had?

A. No, that was lost. About thirty fathom was chaffed off or was left aboard the schooner.

Q. You didn't notice that until the next morning?

A. No. We know the line was short; cut or chaffed off, that's all. [179] But we didn't know how much was lost on that line.

Q. What makes you think it was either cut or chaffed?

A. The line looks like it and the whipping was off it and you could see the ragged end.

Q. That's the same condition that occurs when the line parts without being cut or chaffed off, isn't it?

A. It's a very new line.

Q. Is there anything about that line that would indicate that it was cut or chaffed as distinct from it having parted by reason of any strain?

A. I couldn't say that. I wouldn't answer that question.

Q. Now, during the tow, were you paying any attention to the line?

A. No, I wasn't watching the line. I was forward on the ship on the steamer "Niihau".

Q. What time was this, do you know, when you first got notice, when your steamer first got notice about the "Halcyon" wanting a line?

(Testimony of F. O. Carlson.)

A. When the boat notified that the schooner was ashore asking for assistance? About three-thirty, I should judge. Three-thirty or four o'clock; somewhere around there. Three-thirty. Between three and four o'clock.

Q. Now, how long a time had elapsed from the time that you were first notified of the "Halcyon" wanting a line until she was finally dropped after being towed out from the time that he got a line aboard. How long a time elapsed from the time that you were first notified that the "Halcyon" wanted assistance until the time that you, until the time that she was dropped after being towed out?

A. Between six and seven, I should judge.

Q. It was between six and seven o'clock then, is that what you mean? A. Yes.

Q. When the tow was stopped?

A. When the tow-line carried away. [180-181]

Q. Was it light at that time?

A. It was getting daybreak, yes.

Q. And so that it was sufficiently light to see the schooner, was it?

A. Oh, yes, you could make out the schooner, yes.

Q. And could you see as to whether or not she was holding after the tow parted?

A. As for holding, it seemed to me she was holding. He dropped his anchor immediately and she was lying there at a safe anchorage.

Q. And was there. You don't know whether the schooner had one anchor or two anchors?

(Testimony of F. O. Carlson.)

A. No, I didn't see that, sir.

Q. Do you know whether or not they made fast with the line to any buoy?

A. I didn't pay no attention to that, sir.

Q. And then after the line parted did the "Niihau" remain right there or did she—

A. She steamed a little bit further out towards the north and anchored.

Q. How much farther out?

A. It's pretty hard telling. A safe anchorage; that's as near as I can get to it; away from the schooner.

Q. What do you mean by a safe anchorage away from it?

A. I mean we would swing clear of the schooner; not along of each other; that's a safe anchorage.

Q. Was that the object of the "Niihau's" steaming farther?

A. We have to steam ahead and drop our anchor as I said, at a safe anchorage.

Q. That was the purpose of her steaming further away so that she would be clear of the "Halcyon"?

A. Of the "Halcyon."

Q. And after the "Niihau" was anchored, how far away was she from the "Halcyon"?

A. I couldn't say exactly. I wouldn't like to get myself down how many feet. [182]

The COURT.—You don't have to say exactly if you cannot. Make an estimate approximately.

A. It's pretty hard to do that. I'd rather not answer that question.

(Testimony of F. O. Carlson.)

Q. Well, you mean you'd rather not guess; you are not sure?

A. I'm not sure what the distance we were away from the schooner was.

Q. Is it because you don't remember or that you couldn't exercise very good judgment?

A. I remember well enough at the time we were very busy to get that work done and we didn't pay much attention to the schooner. I had orders to drop my anchor and I dropped it and that's about all and I didn't see how far we were away from the schooner or anything else.

Q. After that did you pay any particular attention to the "Halcyon"?

A. Oh, yes, we paid attention to her we were watching her; we were around on deck, all the officers and crew.

Q. Then there was a time when that gave you a pretty good chance to judge the distance. You say you were watching her then afterwards, after she got, after the "Niihau" got to her anchorage. If you stood there watching the "Halcyon," you must have.

A. I'd rather not answer that question. I wouldn't put myself down.

Q. Was it because you weren't paying particular attention to it?

A. I was paying attention to it, but I didn't pay particular attention how many feet she was away from us.

United States
Circuit Court of Appeals

For the Ninth Circuit.

Apostles on Appeal.
(IN TWO VOLUMES.)

THE AMERICAN SCHOONER "HALCYON," Her Tackle, Apparel, Machinery, Boats, Furniture, Appurtenances, Cargo, and Freight Money, and J. A. T. OLSON, Master and Claimant,

Appellants,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, a Hawaiian Corporation, Owner of the Steamer "NIIHAU," for Itself, the Officers and Crew of Said Steamer and Other Servants of Said Owner,

Appellee.

VOLUME II.
(Pages 225 to 529, Inclusive.)

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(Testimony of F. O. Carlson.)

Q. When you dropped the schooner, did you hear any words exchanged between the master of the schooner and Captain Bruhn?

A. That was before we started to steam ahead. He said, "What you cut my line for like that"? That was all.

Q. You heard Captain Bruhn call that out?

A. That was all I heard. [183]

Q. Called that out to whom?

A. To the captain of the schooner.

Q. Did you hear any answer? A. No.

Q. Didn't hear any answer. Do you know whether the "Halcyon" went back to her original anchorage? A. After we got the schooner?

Q. Yes.

The COURT.—What are you talking about, after the line parted?

Mr. RUSSELL.—Yes. Did she go back to her original anchorage?

A. No, she stayed right there.

Q. And do you know how far that was from where her original anchorage was?

A. It's about pretty near about where she was before she broke away.

Q. I mean the "Niihau"?

A. We anchored about in the same place as before we started off.

Q. About in the same position?

A. The same position, just about; I couldn't tell exactly.

Q. You were about two hundred fathoms nearer

(Testimony of F. O. Carlson.)

in, weren't you? A. May be more, may be less.

Q. You said you stayed by. Did you stay by for the purpose of rendering further assistance to the "Halcyon" in case the "Halcyon" needed it?

A. No, we were through with the towing. The captain (witness indicates with his hands).

Q. Now, why did you say the captain did that, you didn't see that?

A. No, that's where he threw up his hands, they said.

Q. You don't know that?

A. I don't know that.

Mr. RUSSELL.—I move that be stricken out, if the Court please.

The COURT.—Motion is allowed.

Q. Now, what was the next thing that you observed about the "Halcyon"?

A. The next thing *were* when I seen her she was dragging her anchor. [184]

Q. And when was that? That was about two hours afterwards?

A. No, about seven or eight.

Q. Say about an hour afterwards?

A. About that. I should judge about an hour afterwards; may be less, may be a little more. I don't know, I didn't pay much attention to it.

Q. So that for a period of one hour she remained about where she was? Now, how was the sea at the time; that is, between six and seven in the morning as compared to the sea between three and four o'clock in the morning? Was there more or less sea

(Testimony of F. O. Carlson.)

or just about the same?

A. Oh, just about the same; the weather was very squally.

Q. And the wind was about the same?

A. And the wind was about the same.

Q. And between seven and eight you saw her begin to drag her anchor and going toward the boiler? Is that right? A. Yes.

Q. Was she making a straight line for it?

A. It seemed so. She was going right straight in there.

Q. And very gradually?

A. When I noticed it she was dragging very rapidly inside.

Q. Did the "Niihau" go in toward her?

A. Yes.

Q. And you were moving then with the "Halcyon"?

A. We were moving then with it. When we noticed her dragging her anchor we hove up and steamed in and dropped ours.

Q. And dropped yours where?

A. Dropped two anchors.

Q. Where did you drop these two anchors?

A. We dropped them over inside so we could reach her with it. She was pretty near on the beach.

Q. Then when you dropped your anchors you also put a six-inch [185] line in a boat?

A. Put a six-inch line in the boat with a four-inch line.

Q. Just as you did before?

(Testimony of F. O. Carlson.)

A. Yes. The six-inch line was in the boat, the whole length, and the four-inch line was bent on to that.

Q. You did that while the "Niihau" was anchored?

A. Yes, we put out our chain after we moved in.

Q. You moved in and you anchored both anchors?

A. Ninety fathom of chain.

Q. And you anchored while the "Halcyon" was going in toward the boiler, as you say?

A. She was dragging in very rapidly, yes.

Q. And then did you do anything with regard to helping the schooner?

A. We coiled a line in the boat and sent a boat in there immediately.

Q. Not until after the flag was hoisted?

A. Oh, yes, after the flag was hoisted. The flag was hoist long after the boat was about half way in between the "Niihau" and the "Halcyon" when the flag goes up.

Q. Now, did you see the line in the boat going to the "Halcyon" at that time, the second time?

A. Yes.

Q. Then, how did they get the hawser aboard?

A. They had a heaving line, a heaving line in the boat about thirty-five fathom of line, a very small line. They threw it to the schooner to take.

Q. They had no difficulty in doing that?

A. They had all the difficulty in the world to hold themselves on to keep from going on the beach themselves.

(Testimony of F. O. Carlson.)

Q. Did they have a line?

A. They had a hawser. That's the only thing they had.

Q. What would have been the result of this boat going on the beach? Any to the men?

A. Liable the men being drowned. [186]

Q. Life-boat on this beach?

A. Life-boat on this beach is very, very treacherous, sir.

Q. You mean to say that if this boat went on the sand beach that it would have been of serious, of some danger to these men?

A. She would never get on the beach. She would have been turned over before ever she got to the beach.

Q. Precaution was taken against that?

A. Precaution was taken by the boat holding on to the line.

Q. And that was pretty safe precaution?

A. That's the only thing they could do.

Q. Did you see the danger signal? I mean the distress signal, go up? A. I did, sir.

Q. What were you doing?

A. I was forward on the fo'c's'le-head.

Q. And you are sure that after, that when the danger signal, or rather, the distress signal went up that boat was on its way to the "Halcyon"?

A. Yes.

Q. No mistake about that?

A. There's no mistake about that.

(Testimony of F. O. Carlson.)

Q. Did you see from where you were the sand churning there?

A. I saw the sand churning up, sure, we could.

Q. And when did you first notice that? Before or after the life-boat started with the line?

A. After the life-boat.

Q. After that? A. Yes, after that.

Q. Was she churning sand there at the time they hoisted their distress signal? A. Oh, yes.

Q. She was?

A. She was on the beach then.

Q. You say she was on the beach?

A. I wouldn't say so, no. When she set the distress signals she was in a dangerous position.

Q. Was she on the beach, would you say?

A. I couldn't say whether she was on the beach or not. [187]

Q. And you could see from the, from your position that she was churning sand?

A. I could see the sand there all churning with the boat with the heavy breakers.

Q. Where the heavy breakers were?

A. The heavy breakers going up on the beach and the sand was churning up there and rolling rather heavily.

Q. Where was the life-boat when you first saw the churning of the sand?

A. I don't know. When we sent the life-boat in there were no sand churned up there at all.

Q. And by the time the life-boat got to the vessel there was sand?

(Testimony of F. O. Carlson.)

A. Sand churned up all around her, yes.

Q. When the life-boat got to the vessel was the vessel still going in towards shore?

A. She was dragging her anchor all the time.

Q. Doesn't the very fact that she was still dragging her anchors show that she was not on the beach?

A. She was not dragging her anchor when the life-boat got there.

Q. Didn't you say when the life-boat got there she was still dragging her anchor?

A. That's when they *start* from the steamer "Niihau."

Q. You said when the life-boat got to the "Halcyon" the "Halcyon" was still dragging her anchors all the time?

A. I couldn't say that because I couldn't see whether she did or not; I couldn't see it.

Q. Now, after you got the six-inch line aboard, I mean aboard the "Halcyon" you tightened up on that then you sent over a seven-inch line?

A. We hove the six-inch line taut.

Q. What's that?

A. We hove the six-inch line taut; hove it well taut, keep the schooner right there.

Q. Did you say you towed her with just the six-inch line? A. Not the second time.

Q. You didn't tow it?

A. No, put a seven-inch on. [188]

Q. When you put a seven-inch line on her, were you watching the line?

A. I wasn't watching the line, I was forward; the

(Testimony of F. O. Carlson.)

lines were made fast aft.

Q. When they started towing her out did you watch the lines?

A. I didn't see the lines then. I was on the fo'c's'le-head. I was watching the steamer, watching the buoys to see she wasn't going to get foul of anything.

Q. Do you remember when you did start towing that she towed right out?

A. No, we had quite a job to get started.

Q. I see. You had a job to get her started. And do you know why that was?

A. Well, I presume she was on the beach; she was aground.

Q. Why did you say now in your opinion she was on the beach?

A. The time we started to tow her she must have been aground because we had an awful hard time to start her; we hove in our chain and the engine going in full speed ahead at the same time. All we could do was stand still there. When a heavy sea came then we gained a little then stopped again then moved again when the next sea come along; so I presume she was on the beach by the way she was acting.

Q. So you say as of your own knowledge, as a fact, that you had a very difficult time to start the tow, and such a difficult time as leads you to the conclusion that she was on the beach, is that right?

A. Yes.

(Testimony of F. O. Carlson.)

Q. How long were they towing before she commenced to ease up?

A. I couldn't say; I didn't notice the time, sir.

Q. If she were on the beach, or at least you though she were on the beach and you were trying to tow her off the beach, weren't you interested enough to notice?

A. My interest was on the fo'c's'le-head to look out for my anchors and chain.

Q. Well, but you commenced to heave then just as soon as you [189] were ready to start?

A. Well, we heaved in the chain after we got the line fast; we heaved in the chain; was just standing like that; couldn't heave no more on the windlass; the chain wouldn't come in.

Q. Your anchor chains wouldn't come in?

A. The anchor chains wouldn't come in and we were going full speed ahead on the engine.

Q. You went full speed ahead on the engine?

A. We went full speed ahead on the engine and hove on the chain at the same time.

Q. That was your particular work?

A. That was my work at the time.

Q. Well, then, if you were paying so much attention to that, why is it you don't know how long it took before she began to ease up on her tow?

A. I had no watch with me and it was raining and blowing.

Q. You were pretty sure you had your opinion that she was on the beach?

(Testimony of F. O. Carlson.)

A. The way she was going I was pretty sure she was ashore.

Q. If you were tending to your own duty as you had to do and you were watching for your chains and you noticed your chains were taut, why is it that you didn't notice how long it was before they eased up?

A. I couldn't tell you that. When the swell goes in the schooner raises up; we might have got this up on the chain then she stop again.

Q. Even when you were towing out, when you got into the harbor, she was irregular, wasn't she, in her tow? A. No, she was afoul then.

Q. She was afoul then. It is your opinion, then, absolutely, that she was on the beach?

A. On the beach, yes.

Q. Do you know how much water the "Halcyon" took?

A. About twelve or fourteen feet, I should judge; may be more. [190]

Q. How much water does the "Niihau" take?

A. Her load water line is thirteen feet, sir.

Q. She doesn't take any more than thirteen feet?

A. Maybe sometimes when you load her down, but the United States inspector allows her no more than thirteen feet; that's the load line.

Mr. RUSSELL.—I move, if the Court please, that the position the witness indicated here as where the "Halcyon" was at the time that the first line was given her, be stricken, be erased on the ground that it appears that it isn't based on his own knowledge.

(Testimony of F. O. Carlson.)

Mr. WARREN.—To that I will say that the witness didn't make any mark. That is H-2 and H-3 and no H-1.

Mr. RUSSELL.—That's right; I'll withdraw that.

Q. Now, your mark H-2 there is, in your judgment, correct; that is, that's your best judgment, is it? A. As near as I know.

Q. Are you familiar with the harbor there; that is with the lines there?

A. Pretty fairly; fairly good.

Q. Do you know the depth of the water there; along in through there.

Mr. WARREN.—Where?

Mr. RUSSELL.—That is, along the shores of the harbor.

A. I know pretty near it, yes.

Q. And do you know—do you know what that first line indicates?

Mr. WARREN.—Indicating what?

Mr. RUSSELL.—Indicating the first line off the shore.

A. That's the shore; I'm not familiar with the shore-line, sir.

Q. Do you know what that line is? Indicating the first line. [191]

A. That's the shore-line, is it, or railroad track, or what is it?

Q. Well, if you don't know—

A. I don't know anything about the railroad track.

Q. Captain, if you don't know whether that is the

(Testimony of F. O. Carlson.)

shore-line or the railroad track, how did you come to mark that?

Mr. WARREN.—I object; the witness hasn't said that.

The COURT.—Point out the shore-line on that map.

(The witness indicates with eraser end of pencil.)

Q. Just indicate with that pencil what you marked as the shore-line.

Mr. WARREN.—Let him do it with blue pencil.

(The witness indicates with blue pencil.)

Q. Do you know what this line is?

Mr. WARREN.—Indicating the line next seaward of the dotted blue line?

Mr. RUSSELL.—Yes.

A. That's the beach.

Q. Do you know what that line is?

A. That is the sea line; two feet of water indicated right here.

Q. Now, you have marked the position H-2 of the "Halcyon" as being inward and toward the shore of that line.

Mr. WARREN.—What line?

Mr. RUSSELL.—Why, the line just referred to.

A. The "Halcyon" is here.

Q. Here is the line, here is the shore-line?

A. Yes, sir, the beach.

Q. Now, Captain, at all points inside of this line—

Mr. WARREN.—"This line" meaning what?

The COURT.—Dotted blue line.

(Testimony of F. O. Carlson.)

Mr. RUSSELL.—The sea is not more than three or four feet?

A. Two feet. It's marked on here.

Q. And here it's marked four?

A. Six and a half.

Q. That's outside of this line? [192]

A. The schooner is outside the line.

Q. You've marked the schooner in blue pencil inside of the line.

A. That's the mast standing up to indicate it is a schooner.

Q. You have her outside of that. Now, Captain, you notice here a depth of six and a half and here the depth is eight feet? A. Yes.

Q. And she was up in that depth of water?

A. I couldn't say because I did not sound it, sir.

Q. Do you know how much she drew?

A. Twelve or fourteen; between twelve and fourteen feet, I presume when she's loaded; and she had little lumber off her.

Q. She was loaded, wasn't she?

A. She was loaded; she only had taken off very little cargo; very little of her deck load.

Q. And you still say, drawing between twelve and fourteen feet of water she may have been at six or eight feet of water, is that right?

A. She may have been in there, yes.

Q. No, you think it possible in your opinion that she was, that this schooner drawing say from twelve to fourteen feet of water, that when you saw her as the tow-line was being given her, that she was only

(Testimony of F. O. Carlson.)

in about from six to eight feet of water?

A. My candid opinion about it she was aground; she was acting like a vessel would be aground; she was just rolling.

Q. She was way out of the water?

A. When she went over, yes. When she went over to the side you could see pretty near down to the keel; it looked to me, or seemed she was simply on the edge of that sand-bar there and she was rolling.

Q. And you could see her keel?

A. I wouldn't say I could see her keel, but I could see half-way to her bottom.

Q. But you don't know how long it took to take her off? A. I couldn't tell. [193]

Q. It might have been five minutes and it might have been an hour? A. It may be.

Q. Eh?

A. I wouldn't answer that question, Mr. Russell, if I may be excused because I didn't notice it. I know I was very busy forward.

Q. Did you see Captain Mosher go aboard the "Halcyon"? A. No.

Q. Do you know whether or not Captain Mosher got any soundings on the "Halcyon"?

A. I couldn't say; I couldn't say, sir.

Q. Now, she wasn't so near, she wasn't so near to the shore but what there were five or six breakers between her and the shore? A. About that, yes.

Q. Five or six breakers? A. Yes.

Mr. RUSSELL.—That's all.

(Testimony of F. O. Carlson.)

Redirect Examination.

Mr. WARREN.—Q. Were there any lines at any of these operations that belonged to the schooner?

A. It's all steamer lines.

Q. When was it that you heard Captain Bruhn ask Captain Olson what he cut the line for? Was that the first or second tow?

A. When the pilot come alongside, the harbor-master and Captain Olson come alongside, he says, "What you cut my line for?"

The COURT.—That was the first time?

A. That was the first time. The first time, yes, you Honor.

Mr. WARREN.—Was that after the first tow was over or after the second tow?

A. Oh, that was after we were all through the second time.

The COURT.—When the captain of the "Niihau" said to the captain of the schooner, "What did you cut my lines for," when was that?

A. That was, I couldn't say, your Honor, whether it was the [194] first or second time. I don't know.

Q. Let me ask you who else was present at that time?

A. I was on the fo'c's'le-head; the second mate was aft.

Q. Was anybody with Captain Olson?

A. I don't remember.

Q. Where was Captain Olson?

A. Captain Olson, I couldn't say whether it was

(Testimony of F. O. Carlson.)

the first time or the second time when Captain Bruhn told him, "What did you cut my line for."

Q. Was the conversation carried on any distance between them?

A. I couldn't say; I've forgotten that, Mr. Warren.

Q. The line parted at the first attempt, didn't it, when you first towed her off; that's the time the line parted? A. Yes.

The COURT.—It seems logical he must have said it at the time the line parted and not an hour afterwards.

Mr. WARREN.—That is just exactly what I wish to clear up.

A. It must have been the first time that the captain hollered to him, "What did you cut my line for?"

Q. At that time do you know whether Captain Olson was aboard the "Halcyon" or alongside the "Niihau"?

A. I heard the conversation after he got alongside.

Q. When was that, after the first or second tow?

A. That was after the second tow.

Q. Do you think there might have been two occasions, the second time the captain calling, "What did you cut my line for," you heard no answer?

A. It was blowing too hard when the boat came alongside.

Q. Did you hear?

A. I think Captain Bruhn said, "What did you cut my line for, Captain?"

(Testimony of F. O. Carlson.)

Q. Did you hear the answer that time?

A. He said, "I didn't cut them." [195]

The COURT.—When the "Haleyon" was at H-2 and you started to send a line to her, what was holding her then from going ashore?

A. I think, your Honor, she was ashore; the sand beach held her.

Q. She had no anchor out?

A. She had one anchor out, yes.

Q. That was helping her to keep off?

A. I presume so; that's what the anchor is down for.

Q. Now, as you've drawn here on the map that's about the way she was pointing?

A. As near as I can think.

Q. And she was pointing into the north?

A. She was broadside to the sea; she was heading here on the side.

Q. And the wind was striking her on the starboard side? A. Starboard side; wind and sea.

Q. Which direction was her anchor chain?

A. Her anchor chain was standing right straight out.

Q. That's the reason she pointed that way, perhaps?

A. The current down there make a vessel lie that way.

Q. When you saw she was drifting the second time, how did you go in, stern first or bow first?

A. We went in bow first, then we dropped our anchor and swung, the steamer swung around.

(Testimony of F. O. Carlson.)

Q. When you let go your anchor?

A. We let go the other anchor and the wind was taking her right in slow, very slowly.

Q. You did the same way at the first time?

A. Yes.

Mr. WARREN.—When the "Halcyon" was in this position, as you say, H-2, and her bow pointing approximately toward Hilo Sugar Co. mill, was her anchor-chain in line with the vessel or at a different angle?

A. It was on a different angle; she was lying this way and her anchor chain about this way.

Q. Her anchor chain was pointing toward what place, then?

A. Pointing towards, to the northward; out.

Q. Approximately how many points difference between the direction [196] of her anchor chain and her bow at that time. Will you please mark with this blue pencil the direction of her anchor chain from her bow? A. From the "Halcyon's" bow?

Q. From the "Halcyon's" bow at that time.

(The witness marks.)

The COURT.—Nearly at right angles.

Mr. WARREN.—That's all.

Recess.

Testimony of Moki for Libellant.

Direct examination of MOKI, a witness on behalf of libellant, called and sworn.

Mr. WARREN.—Q. Moki, you know Manuel the boat man at Waiakea landing? A. Yes.

(Testimony of Moki.)

Q. And were you with him on the morning that he went out with a launch to where the schooner "Halcyon" was at the time of that storm?

A. The first thing in the morning I went to the boat-house and got on the boat with Manuel.

Q. Speak a little louder.

A. The first thing in that morning, the time I went to the boat-house I got on the boat with Manuel. The boat-house man say I went out with him on that morning.

Q. And where did you go?

A. I go till the schooner.

Q. And did you get there before her line broke or after that line broke; that tow-line?

A. We be there first, the same time. As soon as we alongside the schooner that's the time the tow-line broke from the "Niihau."

Q. Did you see how that line broke or what made it break? Could you tell that?

A. Too much heavy while "Niihau" towing.

Q. Then when the line broke what did the schooner do? A. Well, he dropped his anchor.

Q. What did Manuel do after the schooner dropped anchor?

A. Manuel called to the captain suppose to got any line run and fasten to the buoy. [197]

Q. Did you hear Manuel ask the captain that?

A. Yes.

Q. And what did the captain answer back?

A. The captain said, "That's all right"; he don't

(Testimony of Moki.)

like any line there fastened to the buoy.

Q. That's all he said, "That's all right"? Captain say anything else?

The captain told Manuel that was the line was broken there in the night; told Manuel try to take him off the line from the buoy.

Q. The line on the buoy that had broken the night before? A. Yes.

Q. And what did Manuel do?

A. So Manuel said, "Yes." He went to the buoy and we try to take that line off from the buoy; we couldn't do it because it's too tangled up so we went back again alongside the schooner and Manuel called him again for a second time. "We can't get him out, you see it's all tangled." So Manuel called the captain again suppose he got any line fasten the buoy again; that was the second time; that's all I know.

Q. What did the captain say that time?

A. He said, "That's all right."

Q. What kind of weather was it that day when you were out there? How was the wind?

A. Oh, blowing high.

Q. And the sea? A. Yes.

Q. What direction that wind come from?

A. This Hamakua side.

Q. Then when the captain said the second time he didn't want any rope what did Manuel do?

A. That's all.

Q. Went back? A. Yes.

Q. You didn't go out with Manuel the second time?

A. No.

(Testimony of Moki.)

Mr. WARREN.—Cross-examine. [198]

Cross-examination.

Mr. RUSSELL.—Q. Did you take the line out to the “Halcyon”? A. Which line you mean?

Q. That night, did you take the line out to the “Halcyon”? That morning, did you take the line out to the “Halcyon”? A. What line you mean?

Q. Well, the line that was broken, that was parted; that line that they towed with.

A. The line is broken was in the night, you mean?

Q. Yes.

A. That was the line the captain told Manuel for us to try and take him off from the buoy, but we couldn't do it; it's all tangled.

Q. I didn't quite understand you on direct examination. You were a member of the crew of the “Niihau”? A. No, I'm a shoreman.

Q. And what line was it that you spoke of as having parted? What line was it that you said it was parted?

A. That was the first line; it was the tow-line the time we got there alongside the schooner; that's when the first line I seen it is broken.

Q. Was it daylight or dark?

A. Was in the morning.

Q. That wasn't the line that went from the “Halcyon” to the “Niihau,” was it?

A. That was the line from the “Halcyon” running to the “Niihau” was towing with; that was the line broke.

(Testimony of Moki.)

Q. Oh, that was the line that was broken?

A. Yes.

Q. Was that the line that broke while you were out there?

A. That was the tow-line from the "Niihau."

Q. Did you see it break?

A. We saw it that time it broke. [199]

Q. Did you see it break?

The COURT.—He wants to know did you see it break? (The Court puts the question in Hawaiian.)

The COURT.—He says he saw it break.

Q. Was it out of the water when it broke?

A. Yes, that was the tow-line "Niihau" was pulling it broke.

Q. And was it under the water when it broke or up on the water?

A. It was up on the water; it was towing; the rope was gone down this way.

Q. It was sagging? A. Yes.

Q. And it broke at a point that was out of the water? A. No, half.

Q. Where it broke that was in the air; it wasn't in the water; the place where it broke that was outside the water. A. Was outside the schooner.

(The Court speaks Hawaiian to the witness.)

The COURT.—I understand him to say it was on top of the water.

Q. And where were you at that time? In a boat out near the schooner; near the "Halcyon"?

A. Yes, near the schooner.

(Testimony of Moki.)

Q. And what were you doing out there?

A. What?

Q. What were you doing out there?

A. Oh, I go take a ride with Manuel on the boat.

Q. Just to see what was going on? A. Yes.

Q. You weren't out there for any particular purpose? A. No.

Q. Then when the line broke you asked the captain if you take a line to the buoy?

A. No, not me, Manuel.

Q. What did he say to the captain?

A. He told the captain, suppose he need any line to tie from this schooner; suppose he has any line to run and fasten to the [200] buoy.

Q. Did you see him drop his anchors?

A. Yes, I see him drop his anchors.

Q. How many anchors did you see, one or two?

A. I see one the time he drop, that's all.

Q. Did you see any line being taken to the buoy at all? A. No.

Q. What lines are you referring to that were all tangled up?

A. I guess that was the line he was fastened. I don't know what they call; it's the breast-line; line holding out from the wharf; that was night-time.

Q. Going to the buoy?

A. Yes, to the buoy; that was the line, I think.

Q. What did you go out there for?

A. I take out there to ride with Manuel.

(Testimony of Moki.)

Q. You say that you tried to untangle those lines at the buoy?

A. Yes, that was the first rope; loosen rope from the schooner. The captain told Manuel to go and bring that.

Q. To try and take that line off?

A. Yes, take that line off.

Q. And you went over there and you and Manuel saw the line all tangled up?

A. Yes, we try to open and we couldn't do it.

Q. And had you seen the schooner the day before or the evening before as she was moored there to the wharf

A. No.

Q. Well, you saw the schooner the day before?

A. Well, I seen the schooner; I seen from the boat-house; I didn't go alongside there to look.

Q. And then you saw after Manuel and you went over to untangle the rope you came back and Manuel again asked him if he wanted to take another line over? [201]

A. At first Manuel asked the captain that line was all tangled up; we couldn't open. Then Manuel told again for the second time suppose he has any line to run fasten to the buoy while the boat is there so Manuel could help, you see?

Q. Don't you remember the first time that Manuel asked if he could take a line over to the buoy the captain said he didn't have any more line; that he let out the line to the buoy and asked him to get that line and bring that to him? Do you remember that?

(Testimony of Moki.)

A. Oh, Manuel. The captain, the time Manuel asked for a line run fasten to the buoy, he didn't say, "No, he hasn't got any more line." He said, "that's all right"; that's all what he say.

Q. Why did Manuel go over to the buoy to get that other line? A. Which line you mean?

Q. The line to the buoy? A. This tangled line?

Q. The line that was tangled?

A. The captain sent him.

Q. The captain sent him to get that line at the time he asked the captain if he wanted a line to go to the buoy, is that right? Listen, Moki. Do you remember this, Manuel asked captain if he wants a line to go over to buoy, so the captain tell him to go over to buoy, he find line there; he bring that to him; so Manuel went over there to try and get the line; line all tangled up and he came to captain and told captain line all tangled up and can't get it; then captain says, "All right, I'm all right now." Is that the way it was?

A. Oh, what I heard the first time Manuel got over there while this tow-line from the "Niihau" broken that time so he drop his anchor. Manuel ask him; this was the first time. Manuel asked the captain suppose he has any line to run and fasten to the buoy; well, the captain said he is all right so he asked Manuel to go and get this rope that was broken in the night. I [202] don't know. He told Manuel to go and get that line what they lost.

Q. From the buoy?

(Testimony of Moki.)

A. Yes, from the buoy there. We went over there and try to open; it's all tangled up; we couldn't open so we came right alongside the schooner again; so Manuel asked him again.

Q. When captain told him to go over to buoy to get that line, did the captain say, tell Manuel what do with line?

A. That time Manuel went right alongside the schooner and told the captain that line is all tangled up, can't open.

Q. Before that, at time when captain told Manuel to go and get the line, what he say to Manuel about what to do with line after he get it?

A. I didn't hear him say to do anything.

Q. Is Manuel here? A. Yes.

Mr. RUSSELL.—That's all.

Testimony of Manuel Lacerdo, for Libellant.

Direct examination of MANUEL LACERDO, a witness on behalf of Libellant, called and sworn.

Mr. WARREN.—Q. Did you go out with your launch to the schooner "Halcyon" on the morning that the "Niihau" was towing her out?

A. Yes, sir.

Q. What time did you get out there? Before or after that tow-line broke?

A. Well, I started about seven o'clock.

The COURT.—That is, the line from the "Niihau"?

A. The line that the "Niihau" had hooked on the "Halcyon."

(Testimony of Manuel Lacerdo.)

Q. I don't mean so much by the clock.

A. When I got out to the schooner it was somewhere around six or seven o'clock; of course, the steamer towed her and the line parted somewhere about seven o'clock. [203]

Q. Just where were you when that line parted?

A. I was, say I was somewhere close to that buoy; we were leaving the river going out on this side of the railroad wharf.

Q. The outer buoy?

A. The first buoy going out. The first buoy going out the river.

Q. Close to the end of the wharf? A. Yes.

Q. And how near were you to that when the line broke?

A. When the line parted I was close to the ship on the starboard side.

Q. Now, did you see the line break? A. Yes.

Q. Did you see anything that in your judgment caused it to break? A. Yes.

Q. Do you know what made the line break?

A. Yes.

Q. What was it?

A. She chaffed on the buoy; as the steamer was towing she was duffed underneath the buoy.

Q. What's the shape of these buoys?

A. They're got four pieces nailed to each other; that's about twelve by twelve; that's about twenty-four by twenty-four; the size of the buoy.

Q. Is it round or square? A. Square.

Q. Sharp corners on it?

(Testimony of Manuel Lacerdo.)

A. No, it's got big iron bands around it.

Q. Underneath that band what's the shape?

A. Squaring off the way down.

Q. What did the schooner do?

A. Well, the schooner she went up against the buoy when that line parted and she drifted a little ways to the Hilo side; say ten or fifteen feet away from the buoy and she dropped her anchor [204] there.

Q. What did you do?

A. I went to the captain and asked the captain if he wants any help; if he wants me to run any line. He says he was all right he didn't need any; he says the anchor would hold.

Q. Anything else?

A. He sent me off to the first buoy going out the river to go and get his stern-line that he parted the night before that, the night before that morning.

Q. I want you right here to tell us just as nearly as you can remember what he said?

A. He told me to go and get the line and bring it to the ship; it was only a small piece of line.

Q. Small piece?

A. It wasn't a very big line because she was parted from the ship.

Q. Do you know whether that line would have been or was long enough to reach from the buoy to the schooner?

A. The way she was?

Q. Yes. A. No.

Q. Did you afterwards find out?

A. Well, sir, I can tell when she went from the wharf I was the one ran all them lines. That line

(Testimony of Manuel Lacerdo.)

wouldn't reach where she was anchored after she parted.

Q. Then what did you do?

A. I went over to the buoy with three men on my boat and we tried to get the line out, but the line was all tangled so half way down to the chain. I went back and told the captain I couldn't get the line out. He said, "All right, let it stay there." I looked, of course, when I was alongside the buoy; the ship was drifting a little ways. The ship was drifting inch by inch. I could tell because when you're lying alongside the buoy you ain't drifting. I could see that she was drifting. I told the captain, "You're drifting." He says, "No I ain't drifting." I says, "Captain, you'd better give me a line or you'll go ashore." He said, "That's all right if I do go ashore. That's all right," he says, "My anchor will hold me." [205] I says he'd go ashore; the captain said he was all right. I said, "Captain you'll go ashore." "That's all right, if I go ashore." he says.

Q. Then what did you do?

A. I went over to the boat-house and looked back. She was going back all the time; drifting backwards.

Q. What kind of weather and sea?

A. It was pretty nasty winds blowing; couldn't blow any stronger; the strongest wind we have ever had in Hilo here; going about twenty-five miles an hour.

(Testimony of Manuel Lacerdo.)

Q. When you get back what next did you have to do with that schooner?

A. When I got back to the boat landing, here comes Captain Mosher. In the morning I was looking for Captain Mosher, the pilot because I saw her close to the piles and I was afraid she was going ashore; she was right in straight line with the double reef that faces over there. There is no more than twelve or thirteen feet of water.

Q. How close is that to the mouth of the Waiakea River?

A. It couldn't be any more than two hundred feet from the end of the piles.

Q. You couldn't find the pilot so what did you do?

A. I couldn't find the pilot; rang down to his house and all around; I couldn't get him. Just then I went out.

Q. That is the time you've been telling us about?

A. Yes.

Q. After you got back then what did you do?

A. After I got back Captain Mosher told me to take him out—

Mr. RUSSELL.—Never mind. I object to what Captain Mosher said.

The COURT.—Sustain the objection.

Q. Now what did you do? A. I went out.

Q. At about that time had you been watching the schooner? A. Yes.

Q. Did you see any flags go up, distress signals?

A. No. Well, he had the flag up just before we got there with [206] the pilot on the boat.

(Testimony of Manuel Lacerdo.)

Q. That's the first time you noticed it?

A. That's the first time I noticed the flag. It wasn't there when I left.

Q. When you started out with the pilot how long did it take you to get over there?

A. It didn't take me any more than five or six minutes; not more than five minutes.

Q. How far from the mouth of the Waiakea River was she then? A. Pretty hard for me to tell you.

Q. Well, the best of your judgment?

A. I don't know; that's pretty hard; well, say about three thousand feet anyway from the end of the piles.

Q. Over toward what direction?

A. Towards Hilo.

Q. Now, would you look at this map, Libellee's Exhibit 1, over here? Can you look at this map, Libellee's Exhibit 1, of Hilo harbor, locate approximately where she was in the harbor at the time her flags went up?

A. Well, when her flags went up that's just when she went astrand on the beach.

Q. How far was that from that old black boiler on the beach.

A. Well, it's about two hundred feet; two hundred feet from the Waiakea side; not straight out.

Q. A little Waiakea side of the boiler?

A. Yes.

Q. Then when you got over there what happened?

A. When I got there I wanted to go on the port side of the ship and Mosher told me to go on the star-

(Testimony of Manuel Lacerdo.)

board side; and just when I got there, of course, a little ways, about fifty feet away from the ship and a big swell came over the bow of the boat and water came in and got in my engine; I couldn't go ahead. I dropped anchor. My chain was twelve feet. I was just then on the breakers. I was going back little by little. Captain Mosher [207] was walking back and forward. I suppose he was thinking we would go ashore. I got my anchor up. I went around the stern and got on the port side and put Captain Mosher aboard; just then she was listing, turning over to the Hilo side, somewheres; heading toward Wainaku Mill; just about that direction, her anchor straight out.

Q. Her anchor chain in what direction?

A. Say right straight out the ship's bow swinging this way.

Q. You mean right angles?

A. Yes, right angles.

Q. You said you had eight or ten feet of chain?

The COURT.—Twelve feet?

A. I had somewheres around *then* or twelve feet of chain.

Q. Could you determine the depth of the water there where you anchored?

A. Well, it couldn't be any more than eight feet; between eight and nine feet.

Q. And where you were anchored, was that nearer the shore than the stern of the ship or further out than the stern?

A. Way in toward the stern of the ship. We were

(Testimony of Manuel Lacerdo.)

fifty or sixty feet away from the ship, from the stern of the ship inland.

Q. Now, are you acquainted with the depth of the water around that place? A. Yes.

Q. And little further out? A. Yes.

Q. Can you tell us what the depth of the water was at the place where the stern of the schooner was?

A. Well, I can tell you all right because sometimes it gets deeper; sometimes gets shallower, at that time she didn't had any more than about well, say ten or twelve feet of water; between nine up to twelve feet of water.

Q. Under her stern there?

A. Under her stern there, yes.

Q. Well, how could you tell that her stern was ashore?

A. Well, I could tell from the swells; the swells come up, she wouldn't raise at all; and when the swells goes down she was dry; [208] that is. you could see by the water line where the swells come over leaves a wet line on the ship.

Q. How much of her bottom could you see.

A. Well, I couldn't see any more than about a foot and six inches; somewheres around up to two feet.

Q. You mean below her water line? A. Yes.

Q. How did the ship act?

A. Her bow would go up and down; the stern wouldn't. You know just how a thing is when it's grounded.

Q. Were there any breakers around there?

A. Yes, breakers at her stern.

(Testimony of Manuel Lacerdo.)

Q. And how high was the sea and the swells around the boat herself? A. Around my boat.

Q. No, around the schooner?

A. Around the schooner? Well, the swells would go up to about on the stern, would go up to about four or five feet swells.

Q. How did you judge the height of a swell?

A. The swell I could tell by the ship.

Q. In your judgment, was the schooner in any danger at that time? A. Well, sure; why, yes.

Mr. RUSSELL.—That is objected to, if the Court please; it is calling for the conclusion of the witness.

Mr. WARREN.—Withdraw it for a moment.

Q. How long have you been operating a launch in Hilo? A. Well, about eight years.

Q. Right in Hilo Bay?

A. In Hilo Bay; nowheres else.

Q. Do you know the vicinity pretty well?

A. Oh, yes.

Q. Your business is to work around in the harbor with your launch?

A. Yes, running lines, towing, and so on.

Q. Why would you say she was in danger? [209]

Mr. RUSSELL.—That is objected to as calling for the conclusion of the witness, not a matter subject of expert testimony of the witness; that's an issue that would be for the Court to determine from the other circumstances in the case.

The COURT.—Have you done any wrecking?

A. Yes, I was wrecked there once; I was there when the "Kilauea Hou" went onshore.

(Testimony of Manuel Lacerdo.)

Q. Did you have anything to do with the "Kilauea Hou"?

The COURT.—I will sustain the objection.

Mr. WARREN.—Q. Could you see whether or not the wind had any effect on the ship?

A. Why, of course, the wind had effect on the ship; it was swinging her bow toward the shore after she was grounded.

Q. Could you see whether the sea, waves, had any effect?

A. Yes, the sea was dashing up against the bow on the starboard side.

Q. Did the sea strike her port side at all after her stern struck? A. No.

Q. Then the sea struck her on—

A. On the starboard side.

Q. Starboard side. When you got out there and about the time that your launch got disabled for a little while, where was the "Niihau"?

A. Well, the "Niihau" was outside anchored and he had a line on the ship; that is, they were going over with a line to the ship.

Q. With a small boat?

A. On a rowboat; steamer boat. They were bringing their hawser to the ship. After I got Captain Mosher on board on the port side and the "Niihau" had a line fast on the ship, she commenced to working the ship out.

Q. Tell us just how she worked the ship.

A. The "Niihau" had her anchor out, you know, and he was steaming ahead and towing, steaming

(Testimony of Manuel Lacerdo.)

ahead and heaving up on the [210] anchor and he brought her bow straight out and after a while she went out; was clear of the beach.

Q. Now, how did the schooner move as she came around in that way?

A. The schooner swung her bow straight out towards the steamer and stayed there quite a while, and afterwards she worked her way out slowly.

Q. How do you mean, slowly?

A. As the ship was towing I suppose the swell helped a little bit.

Q. Did she come steadily or in jerks?

A. Kind of jerking like; she'd go and stop, go and stop.

Q. Did that going and stopping, was that in anyway connected with the times that the sea would strike her, the swells would come?

A. No, just then the waves wouldn't bother her, the swells were rising just about amidships of the ship.

Q. After she got around?

A. After she got around.

Q. In your judgment, was your launch in any danger and were you in any danger?

A. Yes, I was taking in lots of water. I had my engine going all the time pumping water out.

Q. What did you do about the water and the tossing of your boat?

A. I was outside waiting for Captain Mosher and looking at them.

Q. While Captain Mosher was on board, while you

(Testimony of Manuel Lacerdo.)

were fixing your steering gear?

A. Captain Mosher was on board while I was fixing my reversing gear.

Q. During that time how did the boat act?

A. The boat was going up and down and the swell was dashing all over the house. I was down getting all the water on my back.

Q. What did Captain Mosher do, if anything?

A. He was walking back and forth. He was worrying his head off. I suppose he thought the boat would swamp. We were drifting ashore a little bit. [211]

Q. Prior to that signal going up on the "Halcyon," when you have told us, was there any signal displayed from the schooner of any kind?

A. When I what?

Q. Before you saw that signal up as you were going over, had you seen any singnals from the ship at all before that, for help?

A. When I seen the signal was when we were going around the piles when I had Captain Mosher.

Q. Before that you saw none?

A. She never put anything up until she was grounded.

Q. Did you watch her pretty much of the time?

A. I was up on the roof of the boat-house watching her.

Q. In your judgment, how far was the schooner from the shore?

A. From shore where she was grounded?

Q. Yes, from the shore-line?

(Testimony of Manuel Lacerdo.)

A. Well, say about little over two hundred feet.

Q. How much?

A. About a little over two hundred feet.

Q. And you say you were fifty feet or so closer in?

A. Yes, closer in shore.

Mr. WARREN.—Cross-examine.

Cross-examination.

Mr. RUSSELL.—Q. When you first appeared there that morning, what did you see, the first thing that you saw that morning?

A. In the morning when I went out?

Q. Yes.

A. What I seen was the "Niihau" pulling her out; had a line on.

Q. Was she proceeding out? A. Yes.

The COURT.—Q. She went along on a straight course alongside of the railroad wharf?

A. Well, quite a ways towards the Hilo side.

Q. Say about two or three hundred feet from the railroad wharf? As must as that? [212]

A. More than that.

Q. And it was daylight?

A. That was between six and seven o'clock in the morning.

Q. And it was daylight? A. Daylight, yes.

Q. Are there any lights on that buoy at night?

A. No lights on the buoy.

Q. And did you see the "Niihau" pass that buoy?

A. The "Niihau" passed in between that buoy and the railroad wharf.

Q. Then it was going out in the direction away

(Testimony of Manuel Lacerdo.)

from the railroad wharf, wasn't it? A. Yes.

Q. The "Niihau" took a course out permitting the buoy to pass in between the schooner and the "Niihau"?

Mr. WARREN.—Object to that as calling for the conclusion of the witness.

The COURT.—Overrule the objection.

A. No, that wasn't the idea. The idea was the captain of the schooner didn't steer in line with the steamer.

Q. He didn't follow?

A. He didn't follow the steamer.

Q. The steamer, the schooner was not in line with the steamer, is that right?

A. Yes. It wasn't in line.

Q. And you mean then that the schooner was going one way—

A. And the steamer going another way.

Q. The steamer going one way and the schooner the other? A. Yes.

Q. You are *position* about that? A. Yes.

Q. And how long did it take from the time that the line got underneath the buoy until it parted.

A. Oh, well, it didn't take any more than about ten minutes that the line was parted.

Q. But did it take ten minutes?

A. Oh, about that; just about that. [213]

Q. And the steamer didn't make any effort to change its course, did it?

A. No, she went right ahead and dropped her anchor and there she stayed.

(Testimony of Manuel Lacerdo.)

Q. No, the steamer? A. The steamer, yes.

Q. What did the steamer do when the line got caught underneath the buoy? Kept going right along?

A. I suppose they kept going because they had such a long line that the line was under the water.

Q. For ten minutes that line was under the buoy?

A. It was coming along slowly under the buoy.

Q. Did you see that line afterwards?

A. I seen the line, yes.

Q. Did you see any marks on that line showing that for ten minutes she had been dragging under some object?

A. It was only a little ways where she was broken off; it was only a little bit; that's a short piece.

Q. As a matter of fact that line didn't show any break or tear except at the point where it had parted, isn't that so? A. Yes.

Q. If that line broke as the result of being chaffed against the buoy how deep underneath the water would that line be?

A. Well, say about four feet any way.

Q. During that tow, wasn't that line taut?

A. Well, the line was taut all right, but according to the swells and the sea that we had once in a while it would go slack.

Q. And the swell and the seas were in toward Waiakea River, weren't they?

A. Well, the swell seemed was running right in straight; that is, more towards the double wharf than anywhere else.

(Testimony of Manuel Lacerdo.)

Q. And do you mean—How would that slacken up, by the steamer?

A. No, it's by the ship.

Q. What's that? A. By the ship. [214]

Q. By the ship?

A. By the ship as she goes up and down on a swell.

Q. And just its movement up and down?

A. Yes.

Q. She was heavily laden, wasn't she?

A. What is it, sir?

Q. She had a load of lumber on?

A. No, she was about half discharged.

Q. She wasn't half discharged, was she?

A. She was about half.

Q. Don't you know she had taken about fifty thousand feet off?

A. I mean on deck; she had only about half a deckload.

Q. Half a deckload?

A. Yes. I don't mean what she had in the hold.

Q. You'd call her fairly loaded, wouldn't you, as she was? A. Well, that—

Q. You don't know, do you?

A. No, I don't know if she was loaded or not.

Q. Now, when you went over to ask the captain if he wanted a line taken to the buoy, did he say anything about not having any line?

A. Yes, he told me he was all right.

Q. Did he say anything about his not having any line on board? A. No.

Q. When he asked you to go over there and get

(Testimony of Manuel Lacerdo.)

that line, do you recall whether it was for the purpose of having a line? Did he say anything about that? A. No.

Q. And then afterwards when you told him that he was going ashore what did he say; said he didn't care as to whether he was?

A. I told him, "Captain," I says, "you're a drifting." He said, "No, I aint." I said, "You'll go ashore." He said, "It's all right if I go ashore."

Q. Didn't he say it sort of tersely as much as to say its not [215] any of your business if he goes ashore or not? A. That is it exactly.

Q. That is the sense he used, that is, you understood that from his tone, the way he said it?

A. Yes.

Q. Now, how soon after the parting of that line did the captain of the "Halcyon" drop his anchors?

A. Oh, well, few minutes afterwards; he had to wait awhile to drift away from the buoy to drop his anchor, otherwise he'd drop it on the buoy's anchor.

Q. So he began to drift immediately with the parting of the hawser?

A. When he parted the hawser he was right up against the buoy; he wasn't drifting then.

Q. You say he was right up against the buoy?

A. We went against the buoy when the line parted.

Q. How far was the "Halcyon" from the buoy?

A. The line was almost up say about forty-five degrees; just about that way.

Q. How many fathoms of line were there from the

(Testimony of Manuel Lacerdo.)

“Halcyon” to the buoy when the line parted?

A. When the line parted it wasn’t any more than about eight fathom.

Q. You’re sure of that; that’s the most that it could have been, eight fathoms?

A. Yes, just about.

Q. Later on, did you see that part of the line that was on the “Halcyon”? A. Yes.

Q. How many fathoms was that?

A. It was only about eight fathoms then when they hauled it up.

Q. So that the remaining part of that line that was aboard the “Halcyon,” which you saw, you say was only about eight fathom long. When you say that the “Halcyon” was right up against the buoy, do you mean that she touched the buoy?

A. Well, why, yes, she touched the buoy and the captain had to wait awhile so she drift away from the buoy.

Q. Well, Manuel, how could she touch the buoy if the line parted [216] before she ever got to the buoy if the swells and sea were directly against her?

A. Well, I could see she had to run into the buoy because the buoy was right ahead of her, and after the line parted the ship has to go a couple of feet ahead.

Q. You mean there was enough momentum to that vessel to carry it eight fathom after the line parted?

A. Yes.

Q. Why, the tow was just creeping along?

(Testimony of Manuel Lacerdo.)

A. Just creeping along, yes; but when you get a heavy vessel like that she'd go some way along.

Q. As a matter of fact, the heavier the vessel the less momentum?

A. The heavier the vessel the more she goes; takes more to stop her.

Q. Then she struck this buoy after going ahead eight fathom. You say she stopped there for awhile? How long?

A. She took the buoy ahead a little ways and she drifted towards the Hilo side.

Q. Then she started going back toward Hilo?

A. Yes.

Q. Well, so that there wasn't any appreciable length of time that she remained still, was there? Just for a moment?

A. Just for a moment then she was still.

Q. Then as she started to drift toward the Hilo side, she continued to drift right along?

A. Didn't continue to drift, but dropped her anchor; that holds her a little while; held her a little while then, after she started to drift, you know. I don't know just exactly when the ship was stopped and the captain dropped her anchor.

Q. Stopped there maybe five or ten minues?

A. About that.

Q. Then she started to drift?

A. Started to drift about inch by inch.

Q. You could see it yourself?

A. I could see she was drifting.

(Testimony of Manuel Lacerdo.)

Q. And called the captain's attention to it?

A. Yes.

Mr. WARREN.—Q. What captain? [217]

Q. Captain Olson? A. Yes.

Q. And the "Halcyon" was right in view of the "Niihau," wasn't she?

A. Well, the "Niihau" was more towards the railroad wharf and the ship more towards the Hilo side.

Q. But it was in view of it? A. Yes, it was.

Q. They were in a position to see it drift just as you were?

A. No, they couldn't see it just where they were; they couldn't see it.

Q. They couldn't see it?

A. They couldn't see it, no.

Q. Because she was drifting on the same line with the "Niihau" was in? A. Yes.

Q. Now, assuming that H-3—you see this H-3—is the "Halcyon" in the direction she was drifting—

Mr. WARREN.—Just a moment. I object to that; that position of H-3 on that map is not, under any of the testimony.

Mr. RUSSELL.—I assume simply that one time or other the "Halcyon" was at H-3, and I'm asking the witness assuming that H-3 was the "Halcyon," in which direction relatively was she drifting?

Q. Are you familiar with this map? That is, do you recognize the railroad wharf and Hilo harbor from this map, calling your attention to this as being the railroad wharf.

(Testimony of Manuel Lacerdo.)

The COURT.—Point him out the river.

Mr. RUSSELL.—And here's Waiakea River; here is the Hilo postoffice, and this is the Wailuku River. Do you recognize the harbor?

A. I can't make out, couldn't get the buoys here.

Q. No, no, this is not the buoy. You don't pay any attention to these marks. Bearing in mind that this is the land, do you now recognize the situation of the harbor? A. This is the railroad wharf?

Q. Yes. [218]

The COURT.—Point out Cocoanut Island and the position of the buoys. He is more accustomed to them.

A. Just a minute, I'll get it. Now, you say this is the railroad wharf here and here's the Waiakea River.

Q. Here's the Waiakea River.

A. Here's the Waiakea River and here's the railroad wharf.

Q. Here's the piles. Well, I guess we can get it more reliably otherwise. Now, at the point where the tow parted, with reference to the railroad wharf and the end of the railroad wharf, where was your, where was the "Halcyon"? A. The "Halcyon"?

Q. Yes. A. When?

Q. At the time the line parted, the hawser parted.

A. The hawser parted?

Q. Yes.

A. She was about half-way of the wharf.

Q. And about how far from the wharf?

(Testimony of Manuel Lacerdo.)

A. I can't exactly tell you.

Q. Well now, as she was drifting in which direction was she drifting?

A. She was drifting more towards the Hilo side.

Q. On a line toward the postoffice, do you think?

A. No, on a line towards the Kilauea Hou's boiler.

Q. Do you recognize where that is, where the boiler is? Never mind, don't attempt it. Now then, with reference to where the "Halcyon" was, where was the "Niihau" anchored at the time the "Halcyon" began drifting?

A. The "Niihau" was anchored right in straight line with the *whaft* at the end of the wharf.

Q. And how far beyond the end of the wharf?

A. You mean how far from the end of the wharf?

Q. Yes, how far from the end of the wharf?

A. She was just about the end of the wharf.

Q. Yes, how far off the wharf?

A. About the same distance as when the ship parted the line; she [219] was in straight line.

Q. How far from the end of the wharf?

A. It's pretty hard for me to tell you.

Q. Six or seven hundred feet? It was at least that, wasn't it?

A. Well, somewheres around that.

Q. Where were you at time you say that you saw her drifting after she had dropped her anchor?

A. I was alongside that buoy trying to get that line that the captain sent me over to try to get it off.

Q. The "Halcyon" being in a position that you described it, she wasn't on a line between the

(Testimony of Manuel Lacerdo.)

"Niihau" and the old boiler, was she?

A. Well, she was in line by the way the wind was blowing.

Q. Well, if you should draw a straight line from where the "Niihau" was to the old boiler that line wouldn't come within six or seven hundred feet of the "Halcyon," would it?

Mr. WARREN.—Just a moment. I'd like to have that testified to as the position of the "Niihau" at the time the line broke or after she went over and anchored.

Mr. RUSSELL.—I've been asking this witness at the time she began drifting, after the anchor was dropped.

The COURT.—You mean as she stood at the end of the wharf anchored?

Mr. RUSSELL.—My particular point is this, to determine the possibility of the "Niihau" observing whether or not she was drifting.

Q. That was before she hooked on to her?

Mr. RUSSELL.—Oh, yes, before she hooked on to her the second time.

The COURT.—And the "Niihau" was lying at anchor?

Mr. RUSSELL.—The "Niihau" was lying at anchor.

Q. You understood, did you not, when I asked you what was the position of the "Niihau" that I meant after the line had parted and she had anchored out there beyond the railroad wharf? You [220] understood that I meant that?

(Testimony of Manuel Lacerdo.)

A. Yes, I understood that.

Q. And then you also understood that when I asked you in regard to seeing the "Halcyon" drift in it was after she had dropped her anchors? A. Yes.

Q. Well, now, was not the "Niihau" in a position to see the "Halcyon" drift in toward the boiler if she were drifting? A. Well, it couldn't see her.

Q. Why not?

A. They were out in straight line with the vessel.

Q. In a straight line with the vessel?

A. Yes, they were outside and the ship was inside and the ship was drifting in this way.

Q. Yes, but if she was drifting in toward the boiler, she wasn't drifting towards Hilo?

A. She was drifting toward the boiler; if was drifting straight inland but kind of Hilo side.

Q. If the "Niihau" was way out beyond the end of the wharf and the "Halcyon" was on the Hilo side of the wharf; that is, about near the buoy, the "Halcyon" would not be in a straight line between the boiler and the "Niihau," would she?

A. Well, no.

Q. It would make almost right angles, wouldn't it?

A. The ship would be out towards the Hilo side if you'd draw from the boiler a line out to the "Niihau."

Q. The Hilo side of that straight line? A. Yes.

Mr. WARREN.—No, I don't think that's what the witness means at all. Did you just mean to say that the schooner was on the Hilo side of a line between

(Testimony of Manuel Lacerdo.)

the "Niihau" and the boiler?

A. Yes, when she dropped her anchor.

Q. You know where the boiler is, don't you?

A. Why, certainly, yes I do.

Q. So you say that the "Niihau" couldn't tell that she was drifting [221] because the "Halcyon" was on a line, a straight line between where the "Niihau" was and the boiler is, is that right?

A. Yes.

Q. You say the wind was about twenty-five miles an hour?

A. About that or more; I couldn't exactly tell but she was blowing about that.

Q. Now, you spoke about the boiler being two hundred feet; that is, the "Halcyon" being two hundred feet from the boiler. Do you mean that in a straight line from the boiler to the "Halcyon," or do you mean a line from the boiler to the beach, the nearest point to where the "Halcyon" was?

A. Oh, from the boiler to the "Halcyon" stern.

Q. From the boiler to the "Halcyon"?

A. "Halcyon's" stern.

Q. Then when you saw her as you say on the beach, on which side of the boiler was she?

A. The boiler was on the Hilo side.

Q. She wasn't going toward the boiler?

A. Well, she would have swung about on the boiler, towards the boiler.

Q. Sandy beach there, isn't it?

(Testimony of Manuel Lacerdo.)

A. A sandy beach, yes.

Q. How many lines did they put on the "Halcyon"? A. Which?

Q. How many lines did the "Niihau" put on the "Halcyon" when she was there?

Mr. WARREN.—When?

Mr. RUSSELL.—On the beach. I said at the time she was on the beach?

A. All I seen was one line.

Q. Did you ever see more than one line?

A. All I seen was one line from the steamer to the ship.

Q. I say, that's all that you saw? A. Yes.

Q. You were noticing the towing at the time that she was there [222] at the beach?

A. Yes. I was on the port side of the ship and the steamer quite aways out just in between the two.

Q. And all you noticed was one line? A. Yes.

Q. You say that when they started to tow her they straightened her out with her stern to the beach and then her bow in a direct line to the "Niihau"?

A. Yes.

Q. And did that take very long?

A. Takes them quite awhile; took them about a half an hour or so.

Q. Half an hour from what point; from what time did you begin to reckon that half-hour? From the time that they started?

A. From the time that she started to go ahead getting her line taut.

(Testimony of Manuel Lacerdo.)

Q. From the time they had their lines taut?

A. Yes.

Q. Until she was straightened out, you say she took about a half-hour? A. About a half-hour.

Q. And then after she was straightened out how long a time did it take before they started out into the harbor?

A. Well, it took them quite awhile; it took them about, well, say about an hour or so.

Q. About an hour or so?

A. About an hour, yes.

Q. You mean to say then they were about an hour and a half there on the beach? A. Yes.

Q. Do I understand that Captain Mosher was in your boat? A. Captain was then on deck.

Q. And did he board the "Halcyon"? A. Yes.

Q. And you took him right up to the—

A. To the ship.

Q. And how did he get aboard the "Halcyon"?

A. He climbed on the rigging. [223]

Q. What do you do now?

A. I'm at the same job.

Q. Are you in the employ of the Inter-Island?

A. No.

Q. You do work for them? A. No.

Q. You own your own launch?

A. I'm running the launch for the Waiakea Boating Co.

Mr. RUSSELL.—That's all.

(Testimony of Manuel Lacerdo.)

Redirect Examination.

Mr. WARREN.—Q. You said that tow-line broke about eight fathoms ahead of the “Halcyon”?

A. Yes.

Q. Have you any idea how much line there was on board the “Halcyon” that was used to make fast?

A. No, I couldn’t tell because I wasn’t aboard.

Q. Then do you know what the total length of that broken piece was? Was it more than the eight fathoms that they had over the bow or do you know at all? All you can tell us is there was about an eight fathom piece that was the distance between the buoy and the “Halcyon” when the line broke. Do you know whether there was any more on board?

A. It’s supposed to have more on board to make fast to the bit.

Q. But you don’t know how much?

A. I don’t know how much.

Q. After the thing was over did you measure the whole piece, including what had been used to make fast with? A. No, I can’t tell.

Q. You don’t know what that whole length was?

A. No, I just figured from the buoy outside of the ship, over to the end, about eight fathoms.

Q. So that in saying that the piece was over eight fathoms long, [224] you don’t mean to take into consideration what there may have been on the ship besides? A. No.

Mr. WARREN.—That’s all.

(Testimony of Manuel Lacerdo.)

Recross-examination.

Mr. RUSSELL.—Q. Did you say that you saw that piece after that day?

A. I saw the piece that was hanging outside the ship to the end, about eight fathoms; that's all. I don't know just exactly how much they have on board.

Q. Didn't you ever see that hawser after the time it parted that morning? You never saw the hawser on the "Halcyon"?

A. No, I didn't go aboard to look at it.

Q. Did you see it after it was taken from the "Halcyon"?

Mr. RUSSELL.—That's all.

The COURT.—Q. Why did you go on to the roof of your boat-house to watch the "Halcyon"?

A. Well, it was because I knew she was drifting; I could see it.

Q. What was the state of the sea, the weather in the harbor, the waves?

A. The waves? How high they were?

Q. Yes. A. Well, about four or five feet.

Q. Do you know why the schooner didn't follow on the first tow, follow the steamer? That is, was it the wind that blew her to leeward or was it the steering? A. It was the person who was steering.

Q. You think it was that entirely? A. Yes.

Q. That buoy is a can buoy that you saw cut the rope? A. Yes.

Q. Iron buoy? A. Wooden buoy.

(Testimony of Manuel Lacerdo.)

Q. Wooden buoy?

A. It's made square, about twelve by twelve; it's all nailed together to be about twenty-four inches by twenty-four.

Q. It just lies flat on the water? [225]

A. No. It was floating. It was just newly there.

Q. Now, when the "Halcyon" was at H-2, that is, on the beach as you call it, stern on the beach, where was the line of the breakers in reference to that?

A. The line of the breakers?

Q. Yes, the outside line of the breakers?

A. Oh, well, just up about her stern.

Q. There's where the line of the breakers was?

A. The line of the breakers, yes; just about before her stern.

Q. Did they break on her?

A. No, they broke right behind the stern.

Mr. RUSSELL.—Q. How fast was that tow proceeding?

The COURT.—Which tow, the first or the second?

Q. The first tow at the time you say they weren't steering. A. How fast?

Q. Yes.

A. Well, a little ways like that I can't figure just that.

Q. Did she have enough way to steer?

A. She had enough to steer her, yes.

Mr. RUSSELL.—That's all.

Testimony of Kaimi, for Libellant.

Direct examination of KAIMI, a witness on behalf of Libellant, called and sworn.

Mr. WARREN.—Q. Kaimi, did you go out in the launch with Manuel when the "Halcyon" was in trouble? A. Yes.

Q. And where did the launch go?

A. The launch went alongside the ship.

Q. Did you hear anything said between Manuel and the captain? A. Yes.

Q. What did Manuel say?

A. Manuel asked the captain if he want any hand running the line to the buoy; the captain said all right. [226]

Q. Said all right?

A. He said that is all right he don't want the line.

Q. Said what?

A. The captain says he was all right. He told Manuel to go and take his line off from the buoy; we went over there and tried to get him off; couldn't get him off; all tangled with the chain, so Manuel went back again, asked him if he want another line running to the buoy; the captain said he was all right.

Q. He said he was all right?

A. Yes. Then we came back.

Q. You didn't go out the second time?

A. No, only one.

Q. How was the wind that day?

A. Oh, the wind was blowing strong.

(Testimony of Kaimi.)

Q. Little wind, big wind, what kind of a wind?

A. Pretty big wind.

Q. How about the waves, the sea?

A. Big waves.

Mr. WARREN.—That's all.

Cross-examination.

Mr. RUSSELL.—Q. Did you see the line break?

A. Yes.

Q. Did you see it the time it broke?

A. Yes, I saw the time it broke.

Q. How did you see, because it was in the air?

A. Yes, the "Niihau" was towing it, one big swell come; the line was up and he start to break.

Q. And you could see it yourself? A. Yes.

Q. You remember, captain, did he say anything to you when Manuel asked him if he wants line to buoy, captain say he didn't have no more line, to go and get the line from the first buoy? [227]

A. Manuel asked him if he want to run a line to the buoy; captain say no; he says he's all right. He told Manuel to go and take his own line; he get one small little line; told him to take him off. We went there to try to get it off; we couldn't get it.

Q. Told him to go and take it off and bring it back to him?

A. Yes; but we couldn't get it off.

Q. Do you remember the captain saying about his not having any more line?

A. He says he's all right he didn't want no line.

Q. How many lines to that buoy when you saw

(Testimony of Kaimi.)

the line all tangled up? A. One.

Q. That's all? Had one? That line that broke, how many fathoms from the place it broke to the schooner?

A. I don't know how many fathoms. I don't know how long that tow-line is but it broke pretty near in the middle.

Q. You say you don't know how long that tow-line is? A. I don't know how long.

Q. And that broke in the middle between the "Halcyon" and the "Niihau"?

Mr. RUSSELL.—That's all.

Mr. WARREN.—That's all.

Testimony of Ralph Balding, for Libellant.

Direct examination of RALPH BALDING, a witness on behalf of libellant, called and sworn.

Mr. WARREN.—I'm not sure we can get very far with Mr. Balding without being on the ground. However, we will make a start.

Q. Mr. Balding, did you, on the morning that the schooner "Halcyon" was in trouble in Hilo Bay, take any note of her and where she was and so on?

A. Yes, I saw her drifting in there.

Q. What position? Where were you at the time that you watched her more particularly?

A. I was in the roadway just opposite the Matson warehouse. [228]

Q. Opposite the Matson warehouse.

A. That roadway that runs to the wharf.

Q. From there did you have any mark or bear-

(Testimony of Ralph Balding.)

ings on the opposite shore which was in line with the vessel?

A. There was a house over there near the end of this railroad bridge down here. We had a line to that and the vessel.

Q. Near the Wailuku River? A. Yes.

Q. Which side of the bridge was that; the outer or inner side? A. Hamakua side.

Q. What color was it?

A. As I remember, it was a red house.

Q. Is it there now?

A. I was over there the other day and there's no red house.

Q. Is there a house with a red roof there?

A. There is a house with a red roof.

Q. Is it close to the railroad bridge?

A. Right at the end of the bridge.

Q. So that for all practical purpose that would be the same thing? And you would be able to go out on that road and take about the same position you had and locate that bearing?

A. About the same, yes.

Q. Now, what part of the ship was in line with that bearing?

A. I don't remember. We had one of the masts. I don't remember whether it was the mainmast or the foremast or which one it was.

Q. Have you any remembrance of judging from your position how far she was from the beach?

A. I didn't take any particular notice.

Q. Could you from your position? Do you re-

(Testimony of Ralph Balding.)

member that you saw the beach?

A. I don't even remember seeing it.

Q. On that day, how high was the water washing up along that shore? Could you tell us that?

A. As near as I remember, it washed up about to the railroad track. It was washing up high then.
[229]

Q. Now, did you take any note of the movement of the schooner as she was in that position?

A. What do you mean? As to her drifting in?

Q. Yes. How she acted?

A. Well, she was drifting in pretty fast.

Q. When you got this bearing, was she still drifting in or had she stopped?

A. No, she was drifting in yet.

Q. Did you watch her till she stopped drifting? From that position?

A. I left there when they ran up the signals.

Mr. RUSSELL.—Q. I didn't understand what you say.

A. When they ran up the signals I went into the warehouse to telephone. When I came out there was a boat going after her.

Q. Did you see the signals go up? A. Yes.

Q. And how far was she from that bearing that you had when those signals went up?

A. About on a line of it, I think.

Q. Could you determine from where you were after the flags went up whether or not she was on the beach, her bottom touching.

(Testimony of Ralph Balding.)

A. No, I don't think I could when the flags went up.

Q. When the flags went up could you tell then?

A. I don't know whether it was before the flags went up or afterwards. She was rising on the waves there and she'd go up and come down and sort of bring up there.

Q. Would that be forward or stern?

A. Her stern. I remember that. I think she did it twice.

Q. When you took your last observation from that position, do you know whether she was still drifting or whether she had stopped?

A. I think she was going in.

Q. When you left that location—

Mr. WARREN.—Except for going on the land and having that bearing pointed out which I would like to do, you may cross-examine. [230]

Cross-examination.

Mr. RUSSELL.—Q. You say that you saw the distress signal go up and you don't recall whether she was still drifting then or not?

A. I think she was drifting all the time until the Inter-Island boat got ahold of her.

Q. You are quite sure of that. You could see her. She was going in rather rapidly until they got hold of her? A. Yes, sir.

Q. And how long a time elapsed from the time that the signals went up until they got hold of her?

A. I don't know. I wouldn't like to say. It's another thing I don't remember.

(Testimony of Ralph Balding.)

Q. Do you recall if they got hold of her how long it was before they started towing her out?

A. I think as soon as they got the line on her they started towing her out.

Q. Up until the time that you saw the signals go up, you hadn't seen any boat going toward her?

A. No, I'd paid no attention to it at all.

Q. And after the signals went up you went inside to telephone and then when you came out you saw a boat going toward the "Halcyon"?

A. One of the steamer's boats.

Q. Did she drift more rapidly as she got near to shore or did she continue about at the same speed all the time?

A. I think, if anything, she drifted a little slower as she got in.

Q. But you're quite certain that she was drifting at the time that they got hold of her?

A. Yes, as I remember it.

Mr. RUSSELL.—That's all.

The COURT.—Q. Mr. Balding, what was the state of the weather where she was? What was the surface in regard to the waves, the surf or breakers?

A. It was pretty rough. I think the stern of her was in the breakers, as I remember it.

Q. Water going over her stern?

A. No, I don't think so. [231]

Mr. RUSSELL.—Q. When did you first notice her?

A. Oh, it must be somewhere around six o'clock when I first saw her.

(Testimony of Ralph Balding.)

Q. At that time was she free of the "Niihau"?

A. When I first saw her, I think the "Niihau" was towing her out and she dropped her anchor alongside the "Enterprise."

Q. Then did she drift from the time you first saw the "Halcyon" drop her anchor?

A. Well, I don't remember. After that I went up to breakfast. When I came back—

Q. Do you recall whether you saw her drifting any before you went to breakfast?

A. I don't think so.

Mr. RUSSELL.—That's all.

Mr. WARREN.—Referring to the matter of the signal that went up compared with the time that you first observed one of the small boats from the "Niihau" going with the line, you say you saw the signal first? A. Yes.

Q. Are you willing to say that the "Niihau" boat was not approaching her at that time?

A. I wouldn't say that. I didn't see it. It might have been. I was more interested in the schooner than I was in the "Niihau." I wasn't paying any attention to the "Niihau."

Testimony of R. W. Filler, for Libellee.

Direct examination of R. W. FILLER, a witness on behalf of libellee, called and sworn.

Mr. WARREN.—Q. Have you ever followed the sea, Captain? A. I did.

Q. And you hold a master's license. You have had some experience at sea?

(Testimony of R. W. Filler.)

A. Eight years before the mast.

Q. Sailing vessels? A. Yes.

Q. Did you observe the "Halcyon" when she was in trouble in the [232] harbor here something over a year ago? A. I did.

Q. Did you at any time when the vessel was drifting toward the beach have any bearings by which you took her position at any time?

A. I noticed that the ship was in distress and I wanted to ascertain whether she was aground or whether she was still drifting, so I had a mark on the opposite shore and I knew she was still drifting.

Q. Where were you standing?

A. Somewhere on the road toward the railroad wharf; directly opposite the Matson warehouse, to the best of my recollection.

Q. What bearing did you have on the other shore?

A. I couldn't state now. I had some mark. It must have been Mr. Severance's house.

Q. If you were to go to that spot, do you think you could locate that mark? A. I think so.

Q. And was that very far from the end of the bridge on the other side?

A. Heading towards the railroad wharf.

Q. The bridge on the Wailuku River, on that side?

A. Wailuku.

Q. Is that the right name of it; that bridge on the Hamakua side?

A. Yes. That would be Wailuku River, yes.

Q. Was that house that you had for a mark anywhere near the edge of that bridge?

(Testimony of R. W. Filler.)

A. I was standing here.

Q. Can you locate on the map here about where you were standing and about where your bearing was?

A. I was standing here and the ship was in this direction and I must have had a mark. If I'm not mistaken it was either the Austin residence or the—

Q. Will you mark a blue cross on that side where that house was?

A. (The witness marks.) Approximately there.

Q. Now, will you make a cross about where you were standing on the road?

A. (Witness marks.) [233]

Mr. WARREN.—Witness marks a cross near Waiakea.

A. The road leading towards the wharf.

Q. Now, the ship was in that line?

A. Yes, in that line.

Q. And could you determine from that about how far she was from the beach, or did you try to fix that in your mind at all?

A. No. From recollection I would say a matter of six hundred feet; possibly a little more, but not very much.

Q. At that time was she still drifting?

A. She had come, as near as I can remember to a stop and she was gradually broaching to, as we call it; that is, broadside on to the sea with her head cut towards Wainaku.

Q. When I say the distance from her to the beach,

(Testimony of R. W. Filler.)

I don't mean from where you were, or from the direction, but from her stern towards land.

A. Towards land.

Q. You didn't at that time endeavor to fix it?

A. No.

Q. If you were there now, do you think you could form a judgment?

A. I think I could form a fairly accurate estimate of the distance.

Q. How did she act? Did you watch her to determine whether she struck or not?

A. Yes, she struck.

Q. Will you describe what she did?

A. She would lift bodily and come down; you could tell by the quiver in the spars she was struck; you see she began to swing.

Q. Did you see the signal flag go up?

A. I paid no attention to any signals.

Q. Did you observe the operations of the "Niihau" in connection with the signals?

A. I observed the operations of a steamer; whether it was the "Niihau," I could not say at this date.

Q. Whatever steamer that was. Did you see any boat go towards her?

A. I believe the line was fast to the boat at that particular time. [234]

Q. What did that steamer do?

A. The line was fast and I saw the line gradually tighten and not observing the steamer going ahead very rapidly I came to the conclusion that they must be heaving away on their anchor chains and, as a

(Testimony of R. W. Filler.)

matter of fact they did until they got a gradual strain on the lines, and after a time I could see her head swing off again and in a very, very gradual way the captain worked her off the beach. To the best of my recollection, at the time he had his anchor chains short he steamed ahead.

Q. Do you know whether he steamed before he got her head around or not?

A. He might have steamed slowly. I remember now he was heaving on his anchor chains.

Q. Are you more or less familiar with the depths of water around the harbor here?

A. In a general way.

Q. Have you had any occasion to investigate them in connection with the use of wharves?

A. Not at that particular spot.

Q. But generally?

A. Yes, I have a general idea of where the deep water contours are.

Q. From your recollection of where the schooner was at the time, do you believe she was in deep water?

A. I would form my estimate less from the actual knowledge of the depth of water as I would from the side of the vessel and her behavior in the water. I had an idea she was in about ten or twelve feet of water.

Q. Would that be forward or aft?

Mr. RUSSELL.—That is objected to, if the Court please, as not a proper subject of expert testimony.

(Testimony of R. W. Filler.)

The COURT.—Do you know anything of the depth of the water there?

A. Oh, in that particular locality I would surmise there would be anywhere between ten and fifteen feet of water.

Mr. WARREN.—But you personally haven't been over there to make [235] soundings?

A. No, I have not.

The COURT.—I think in regard to the action of the ship, that that's a matter for the Court.

Mr. WARREN.—Now, will you describe just the way the ship did act?

A. When?

Q. At the time when you say in your judgment she was ashore before they began getting her head around and while they were getting her head around?

A. Well, I hardly know how to describe it. A person must have had some personal experience in order to understand, but you can tell by the way in which the ship is lying when she is in shallow water and there isn't sufficient water under the keel.

Q. You've had that experience yourself?

A. Yes. I've had two experiences. One was with a ship of Kahului.

Q. Was there anything in connection with the vessel there that would lead you to think her stern was aground?

A. It is a known fact that a vessel the moment she gets into shallow water will broach to.

Q. Will she do that before she touches?

(Testimony of R. W. Filler.)

A. No, it's the consequence of the stern touching first and the wave action turning her around broadside.

Q. And particularly if she were dragging an anchor?

A. At that particular time she was past the stage of dragging an anchor.

Mr. WARREN.—I think aside from visiting the locality to-morrow morning in order to indicate where you stood so we can get that bearing and if necessary take a measurement, I am through with the direct.

Cross-examination.

Mr. RUSSELL.—Q. Captain, you didn't observe that vessel at all after she had a line from the steamer?

A. My mind is quite clear, to the best of my recollection, a line [236] was on her or being fastened at the time.

Q. Did you notice the vessel after they started to tow her; that is, up until the time they started to tow her out?

A. I was an interested spectator to see what was being done.

Q. How long a time would it take before they got started out into the harbor?

A. Oh, I should say from the time I came into the scene and until the vessel was heading straight for the sea and moving clear again, thirty-five minutes.

Mr. RUSSELL.—That's all.

(Testimony of R. W. Filler.)

The COURT.—Where was the surf-line in reference to the time she went broadside on?

A. The surf-line parallel to the beach.

Q. Where was the outside surf?

A. Oh, I saw the line of the breakers; I don't remember seeing any breakers ahead of the vessel.

Q. And how about her stern? Was she outside of the line of the breakers?

A. I couldn't recall it, your Honor.

Q. Were the breakers rather heavy?

A. Well, I've seen it break heavier there.

Q. What kind of weather would you call it?

A. Northerly weather, you know; northerly, rough, blowing pretty hard.

Q. How many miles an hour was the wind blowing?

A. About thirty miles; possibly not quite as much.

Tuesday, August 17, 1915.

(Court convened at the road leading to the railroad wharf, opposite the Matson warehouse referred to in the foregoing testimony.)

Mr. WARREN.—(Continuing direct examination of F. W. Filler.)

Q. Captain, could you, from standing here now, estimate that distance from shore any better than you could yesterday?

A. Well, you can see the distance there; it must be between four hundred, five hundred, or six hundred feet. The ship was dragging [237] you could see very plainly; there wasn't any doubt at all

(Testimony of F. W. Filler.)

about that. I could see before they brought any strain to bear on the hawser that the ship's head was pulling toward the shore all the time. When they got the strain on the line you could see her head come around at that time. As I say, I must have taken her hearings. I remember at the time that I admired the fellow's seamanlike way of doing things. He brought the strain on those lines so gradually; he took his time in coaxing her off the beach rather than hauling her off and running the risk of breaks his lines.

The COURT.—Before he commenced to get a strain on the lines, what did you see; did you see the starboard side of the boat?

A. I saw the starboard side of the boat.

Q. Was she heading towards Wainaku?

A. You see that big swash that comes under the stern when she sets down, that's what attracted me. I'm not quite sure now that I had the line on the Richardson premises or that white house. I don't think that white house was there at the time.

Mr. RUSSELL.—You are, of course, certain that it was on the Hamakua side of that bridge?

Mr. WARREN.—Your house.

A. I am fairly certain, I think.

(Court reconvenes in courtroom.)

Testimony of H. P. Morton, for Libellant.

Direct examination of H. P. Morton, a witness on behalf of libellant, called and sworn.

Mr. WARREN.—Q. In January of 1914, you were purser on the "Niihau"? A. Yes, sir. [238]

(Testimony of H. P. Morton.)

Q. And will you state what happened so far as you are concerned when you left in a boat early of the morning of the day that the "Halcyon" was in trouble; just what experience did you have with the "Halcyon"?

A. We left the wharf, that is, where the gasoline boats are.

Q. In Waiakea?

A. At Waiakea, with some of the crew for to go out to the "Niihau." We were to sail that morning at about three-thirty A. M. As we got out to the mouth of Waiakea River, I noticed the schooner pretty close in. I thought that she was anchored at the time we passed her. At least we were along abreast of her and we heard somebody shouting for help.

Q. From where?

A. From the schooner. The "Ka Moi" was lying alongside the wharf and when we got along abreast the "Ka Moi," the captain of the "Ka Moi" told me that the schooner was in trouble.

Mr. RUSSELL.—I move to strike out what the captain of the "Ka Moi" *side*.

The COURT.—What did the captain say?

A. He told us, he spoke to me in Hawaiian; said that the schooner "Halcyon" was ashore and wanted a line.

The COURT.—That may be stricken. In consequence of what he said, what did you do? A. We—

Mr. WARREN.—Just a moment. I want to go back to the time you heard the calling from the

(Testimony of H. P. Morton.)

“Halcyon” to you. What was said between you and whoever it was on board the “Halcyon” about help. Did you say anything?

A. No, I don’t remember of ever saying anything. It was so long ago I don’t quite remember now. I might have said something.

Q. Well, in consequence of your passing that schooner and hearing that call for help what did you do?

A. We tried to get up as close to the schooner as possible.

Q. In your small boat?

A. Yes, and asked him what he wanted. He told me he was ashore and wanted a line. [239]

Q. Who was that on board, do you know?

A. I can’t recall whether it was the captain or crew.

Q. He said he was ashore and wanted a line?

A. Wanted a line.

Q. What did you say?

A. I said, all right, just as soon as I’d get out to the steamer I’d call the captain and see what he could do.

Q. Then what did you do?

A. We went aboard the steamer and told the captain the schooner “Halcyon” was ashore and wanted a line. He immediately got out of his room and got a tow-line ready. He ran a boat, in fact, the boat we were in. He sent the second mate. I don’t know if the second mate was in that boat already but he sent

(Testimony of H. P. Morton.)

a line to her and got a line fast to her and started to tow her.

Q. That's all I wanted to ask you. I don't want to cover the same ground too many times. Did you that night, either before or after you passed the schooner and had that conversation, see any signal or flarelights from the schooner?

A. No, we didn't see any flarelights at all only a light away aft that might have been the cabin just near daylight.

Q. Will you describe just as particularly as you can just where the "Halcyon" was, how far from shore, how far away from the Waiakea River and so on, the best you can?

A. I believe she was about fifty feet off the piles there, parts of the old Hackfeld wharf.

Q. Could you make a mark that would locate the "Halcyon" when you passed her the first time?

A. Are these the piles here?

Q. That black line, yes.

A. I should judge she was about here.

Q. Will you make a round dot and heavy line with pencil?

A. I guess this is just about where the Hackfeld wharf is, just abreast of that would bring it about here. (Indicating.)

Mr. WARREN.—The map now shows a black dot near the end of the piles connected by a line with the letters H. P. M. [240]

The COURT.—I'd like to have you read from the chart the standard of measurement.

(Testimony of H. P. Morton.)

Mr. WARREN.—The scale of the chart is 1 to 10,000.

Q. Your effort, Mr. Moreton, to mark this, has no reference to scale? A. No.

Q. So that independently of this map you say she was fifty feet from the end of the piles? A. Yes.

Q. How far in distance from the Hackfeld wharf?

A. About four times that distance; about one hundred and fifty feet to two hundred feet.

The COURT.—When you're talking about her, are you speaking of her stern?

A. I'm speaking, you see, the ship was not heading out at the time. She was heading then more or less towards the end of the Mauna Kea wharf.

Q. Here's a big three-masted schooner, when you're speaking of fifty feet, what part of the schooner are you referring to?

A. About amidships and maybe a little aft.

Mr. WARREN.—If it was fifty feet from the end of the piles to amidships her stern would be whatever nearer distance the half of the ship was? A. Yes.

The COURT.—I don't think that can be so because here's a ship that is three hundred feet long, two hundred feet long.

A. I don't believe she's two hundred feet long. When I say fifty feet off the end of the piles, I mean directly out from the piles.

Q. From the piles to her stern. Can you take a sheet of paper and make a sketch; better sketch the mouth of that Waiakea River, the Hackfeld wharf, the river mouth, and piles; then locate the schooner.

(Testimony of H. P. Morton.)

A. What I mean fifty feet, she was fifty feet this way from the pile; might have been more that way, about two hundred feet or one hundred and fifty feet off the Hackfeld wharf.

Q. Write that word there, please. Hackfeld wharf.

(Witness writes.) [241]

Q. Now, over here mark piles by the word piles.

(Witness writes.)

Q. Now, the Waiakea River is where?

A. The Waiakea River is about here. (Indicating.)

Q. Just connect that up with the piles.

The COURT.—Then that's about the position she was lying, was it?

A. Yes. This will be about fifty feet. I mean fifty feet directly out.

Mr. WARREN.—Toward the Mauna Kea wharf from the end of the piles?

A. Yes; directly fifty feet out this way, out towards the bay; the schooner was lying on this side of the piles.

Q. Closer to the shore than the piles?

A. Yes. The shore is here; closer this side; say about a hundred feet off that way.

Q. And you change your old evidence from fifty to a hundred feet?

A. No, fifty feet out this way and about a hundred feet out this way.

Q. Will you mark on this line fifty feet?

A. This first one.

(Testimony of H. P. Morton.)

Q. That indicates as I understand it, the distance she was toward Hilo bay from the piles? A. Yes.

Q. But at the same time she was about a hundred feet from the end of the piles measuring in a direction from the piles toward the Hackfeld wharf?

A. Yes.

Mr. WARREN.—I offer that.

The COURT.—Mark it exhibit made by H. P. Moreton.

(Mr. Warren marks.)

The COURT.—It may be admitted. (Libellant's Ex. "A.")

Cross-examination.

Mr. RUSSELL.—Mr. Moreton, I don't quite understand what you mean by having a measurement fifty feet one way and a hundred [242] feet the other way, You are measuring both distances from the end—

A. From the end of the piles.

Q. And you have here marked as a position of the schooner with the stern to the end of the piles?

A. Towards the end of the piles.

Q. Practically so? A. Yes.

Q. Then you have a hundred feet from her stern to the end of the piles?

A. Just about a hundred feet, yes.

Q. Well, now, measuring from the stern to the end of the piles with her stern to the piles is a hundred feet. You have a measurement there of the shortest distance between the end of the piles and the stern.

A. I don't get what you're talking about.

(Testimony of H. P. Morton.)

Q. You have her position here, this being the end of the piles and the schooner lying with her stern to the end of the piles.

A. I won't say she was lying in a direct line; she might have been a little more this side probably, but she was not heading directly out in the bay; that's my idea.

Q. As you have it here you have a distance from the stern of the schooner to the end of the piles as a hundred feet. A. About a hundred feet.

Q. Now, when you measure fifty feet, you measure from the end of the piles to what part of the schooner?

A. Well, that would bring you about to near the stern of the steamer and not quite amidship.

Q. You mean this, that the stern of the vessel was on a line fifty feet from the end of the piles and then measuring it also on a line to the, say to the end of the wharf, to the end of say the railroad wharf, she was a hundred feet to the wharf, wasn't she?

A. Yes.

Mr. WARREN.—Which would it be, the railroad wharf?

Q. When you drew the railroad wharf this Hackfeld wharf should [243] be further in here. The railroad wharf would be about here?

A. My drawing this map here kind of balls things up a little. The "Ka Moi" was lying here and she wasn't far from the schooner.

Q. How far away was the "Ka Moi" from the schooner at the time?

(Testimony of H. P. Morton.)

A. I can't tell you that because it's hard telling it going out on a dark night when you can see just a few feet ahead of you; approximately about two hundred or two hundred and fifty feet from the "Ka Moi."

Q. And how far would you say she was, where the Hackfeld wharf is from the shore end of the railroad wharf?

A. About a hundred feet I should think or one hundred and fifty or maybe less.

Q. And then your relative measurements when you refer to *tis* being, the "Halcyon" being a hundred feet from the end of the wharf was about the same as the measurements you referred to with regard to the other boats? A. What is that?

Q. For instance, when you say that Hackfeld's wharf is about two hundred feet—

Mr. WARREN.—I object to that?

A. I said about one hundred or one hundred and fifty.

Q. You say that the Hackfeld wharf is about a hundred or hundred and fifty feet away from the railroad wharf? Then the schooner was about the same distance or a little distance from the end of the piles as the railroad wharf is from the Hackfeld wharf? A. Yes, about.

Q. Now, these are approximate measurements?

A. Approximate, yes.

Q. It was pretty dark that night? A. Yes.

Q. And you didn't pay any particular attention to the distance, did you? A. No.

(Testimony of H. P. Morton.)

Q. And these distances that you testified to now are the distances that occurred to you sometime after this thing had happened? A. Yes. [244]

Q. And those are your recollections? A. Yes.

Q. Now, when you came out of the Waiakea wharf; that is, when you came out of the Waiakea River, you say you thought she was anchored?

A. Yes, at the time I thought she was anchored.

Q. That is, she was perfectly still?

A. She was rolling quite a bit; quite a sea running that night.

Q. She didn't seem to be moving except for rolling? A. Yes.

Q. And you didn't pay any attention to her until someone called from the schooner?

A. No. Well, I did notice something kind of funny her being so close in.

Q. But you didn't pay any further attention to her until they called to you? A. Yes.

Q. And then they asked you for a line; that is, to tell the "Niihau" to get a line? A. Yes.

Q. You say someone on that vessel told you the vessel was ashore? A. Yes, sir.

Q. Do you know the depth of the sea around that point?

A. I do not. I haven't the least idea.

Q. Did you bring the tow-line back?

A. What's that.

Q. Did you bring the tow-line back?

A. I did not.

Q. After you got on the "Niihau" they sent some-

(Testimony of H. P. Morton.)

body else with the tow-line? A. Yes, sir.

Q. You're still in the employ of the Inter-Island?

A. Yes, sir.

Q. How long did it take after you were told, after you were asked to take a line to the "Halcyon" before the "Halcyon," before you started towing her out?

A. I should say about three-quarters of an hour, half an hour, or thereabouts. [245]

Mr. RUSSELL.—That's all.

Mr. WARREN.—That's all.

Testimony of W. F. Thompson, for Libellant.

Direct examination of W. F. THOMPSON, a witness on behalf of libellant, called and sworn.

Mr. WARREN.—Q. Mr. Thompson, in the month of January, 1914, you were second mate of the Inter-Island steamer "Niihau"? A. Yes, sir.

Q. And you were present and took part in the operations when the "Niihau" assisted the schooner "Halcyon" in Hilo Harbor? A. Yes.

Q. Now, were you on board the vessel when word came to the "Niihau," when word came that a line was wanted by the "Halcyon"?

A. Yes, I was aboard at that time.

Q. Now, tell us what you had to do with the operations of the "Niihau"?

A. I had to get lines ready, get them in the boat; first the six-inch, coiled in the boat.

Q. Where did you get that line?

A. From the steamer "Niihau." Then bent a four-inch line on, they *they* would take the whole

(Testimony of W. F. Thompson.)

line. Then they started for the schooner "Halcyon."

Q. How did that boat go from the "Niihau" to the "Halcyon"? A. How did she go?

Q. How did it get from one place to the other? Did they row?

A. They rowed; they pulled at the oars.

Q. In what manner did the boat go from the "Niihau" to the schooner. You say rowed with oars?

A. Yes, sir, rowed with oars.

Q. How was the line arranged?

A. The six-inch line was coiled in the middle of the boat and we bent it on the four-inch line.

Q. The other end of the four-inch line being fast where? [246] A. On the "Niihau."

Q. When they reached the "Halcyon," they paid out from the boat?

A. When they got alongside the "Halcyon" I assumed they got the line aboard and then got off.

Q. You were not aboard? A. Not the first boat.

Q. All you know is that the boat was dispatched with the line as you have described? A. Yes, sir.

Q. And the boat came back? A. Came back.

Q. What did the "Niihau" do?

A. The "Niihau" hauled in on the four-inch line till they got the six-inch line; we hauled it right on the steam winch forward; that's the most powerful winch we've got; they hauled them in until they got the six-inch line on board.

Q. What did they do?

A. I was standing aft. I believe they hove in on her anchors.

(Testimony of W. F. Thompson.)

Q. What was done with the six-inch line when you got it aboard?

A. That was made fast right foward on the bits.

Q. For the purpose of sending a line to the "Halcyon," what move did the steamer "Niihau" make? Did she change her position at all?

A. Yes, sir, she changed her position.

Q. Describe how she did that?

A. In the morning, about four o'clock I was waked up; the purser and the boat's crew they came off and report the "Halcyon" was ashore; we was lying pretty well out.

Q. What did you do?

A. Captain, he gave orders; he got in and moved the ship in.

Q. Moved her in where?

A. In towards the railroad wharf so that we could drop down towards the "Halcyon."

Q. What course did he take as respects the buoys on the Hilo side of the railroad wharf? Where did he go, inside or outside the buoys?

A. Dropped outside of them buoys. He didn't go inside them, I know that. It was dark in the [247] morning, I couldn't see.

Q. How many anchors did you put out?

A. There was two anchors put down.

Q. How much chain?

A. I believe I heard from the chief officer about eighty or ninety fathoms.

Q. You personally don't know that?

A. No, sir; I was aft.

(Testimony of W. F. Thompson.)

Q. How long was that six-inch line?

A. Supposed to be a whole coil, one hundred and twenty fathoms.

Q. Who broke that coil out? Did you have anything to do with breaking that coil out?

A. I don't think I did.

Q. Was it a new or old line?

A. No, sir, it was a brand new line.

Q. Could you tell us after the end of the six-inch line had been brought on board the "Niihau," the other end being on board the "Halcyon," what length of line it was? The distance between the boats?

A. Well, it's according they made that line on the "Halcyon" fast. If they made that fast, it would probably have six or seven fathom on.

Q. I'm asking you more particularly aside from how much they had on board the "Halcyon" and aside from how much they had on board the "Niihau," what the distance between the two vessels was after they got that line?

The COURT.—Was it light enough for you to see?

A. That time in the morning it was dark.

Q. Later on, when did that line part?

A. That line parted along after daylight.

Q. All right. So that when it came daylight had the line been shortened in any way?

A. No, after the first towing I couldn't tell whether it was or not.

Q. So that at daylight you could see the schooner "Halcyon" from the "Niihau" while you were towing? [248]

(Testimony of W. F. Thompson.)

A. Yes, sir.

Q. What is your best judgment of the distance between the vessels at that time?

A. It's pretty difficult; I couldn't give you anywhere about near the distances.

The COURT.—He wants you to say how far they were apart.

Q. Tell us what the distance was between the two vessels, the nearest you can estimate that.

The COURT.—From what you saw.

A. I should probably judge about four hundred feet.

Q. Now, after the boat had been sent down with the line and had returned, did any other boat go from the "Niihau" down toward the "Halcyon"?

A. Yes, one boat's crew. I went on the boat myself.

Q. How soon did you go after the line had been sent?

A. As soon as the boat returned, I had orders from Captain Bruhn to take the same boat's crew and lead line and go in there and sound to see what the water was around the "Halcyon." The crew refused to go in there without a surf-line. It was dangerous.

Q. What did you do?

A. I went in there with the boat's crew. They first took the lead line on the boat. Then we got a surf-line and we coiled the surf-line on the boat and left one end on the "Niihau" on the main deck forward so they could have it ready to take to the winch.

(Testimony of W. F. Thompson.)

When we got outside the breakers we swing the boat head into the wind and sea.

Q. What direction did you take?

A. We took a direction almost from the Waiakea River.

Q. How near did that operation bring your boat to the "Halcyon"?

A. Well, we was out, we was ahead of the bow of the "Halcyon" before we swung. I seen quite a bad sea running in there. For safety's sake I had the boat swung ahead to the sea. We could control her by our surf-line.

Q. How close did you get to the "Halcyon"?
[249]

A. We got *then* off her starboard bow, I should judge about two boats' lengths the Waiakea River side of the "Halcyon."

Q. Then what did you do?

A. I took soundings.

Q. What sounding did you get?

A. As near as I can get with the sea running and boat shaking up and down, I got three fathoms forward.

Q. Did you take any other soundings?

A. I got in as far aft as I could get. I was probably between the mizzenmast and foremast. I got about two and one-half fathoms of water as near as I could judge.

Q. And any other soundings?

A. No, sir, no more soundings. We was anxious to get out of there as quick as we could.

(Testimony of W. F. Thompson.)

Q. How long have you been following the sea?

A. I went to sea when I was fourteen years old. I've been there most of my life.

Q. Are you acquainted with Hilo harbor?

A. I've been in Hilo harbor several times.

Q. Been in heavy weather before?

A. Yes, sir, all kinds of weather.

Q. In your opinion, was your small boat in any position of danger?

A. She was in considerable danger because if that boat capsized that would have been the last of us.

Q. At that time could you form an estimate of the distance of the schooner from the end of the piles at the mouth of Waiakea River? You know that line of piles?

A. I know that line of piles, yes, sir. No, sir, I could not; it was too dark.

Q. And could you form a judgment of how far the schooner was from the shore side?

A. From the shore side?

Q. From the shore to the schooner?

A. No, too dark. Too dark, I couldn't make it out; too dark [250] and blowing heavy; squally. I was anxious to get out of there.

Q. You didn't go on the starboard side of the schooner?

A. We went on the starboard side of the schooner to take soundings.

Q. Then you went between the schooner and—

A. We were between the schooner and the Waiakea River, the railroad wharf.

(Testimony of W. F. Thompson.)

Q. Then she was lying, or pointing, in what direction?

A. Here's the wharf this way and I think the schooner was pointing a little towards the Hilo railroad wharf, not on broadside or anything but heading out.

Q. Do you know where the old so-called Hackfeld wharf is? A. Yes.

Q. How was she heading with respect to that?

A. Heading like this. The Hackfeld wharf runs almost the same.

Q. Would you know whether she was on the Hilo side of the Hackfeld wharf or further out? Could you tell that?

A. You mean was she further out to sea or was she in line with the wharf?

Q. Yes.

A. It is pretty hard to pick the Hackfeld wharf out that morning.

Q. How did you get back to the "Niihau" with that boat after taking soundings?

A. We waved to them or whistled to them and helped ourselves out. We had enough men in the boat to double bank some of the oars; that is, two men on each oar. We helped ourselves and they give us a heave on the winch.

Q. How long do you think the towing continued after the six-inch line had been made fast before the line parted?

A. Before that six-inch line parted that must have

(Testimony of W. F. Thompson.)

been between six and seven in the morning. It was very daylight when the line parted.

Q. About how much time had elapsed? How long was the towing not by the clock but in point of time?

A. How long had we been towing on the vessel?

Q. Yes.

A. Probably over an hour; been towing [251] on her over an hour.

Q. Do you know what parted that line? Do you know yourself?

A. No, sir, I don't know what parted that line.

Q. Did you see the broken end afterwards?

A. Yes, we hauled the broken end on the "Niihau," what was left; we hauled that hawser right in on deck.

Q. You saw the broken end? A. Yes, sir.

Q. Could you tell from your examination of that anything about the way it had been broken?

A. No, sir, I could not; I never took notice how it was broken; whether it carried away or they cut it or how.

Q. Did you afterwards recover the portion of that line from the "Halcyon"? A. Yes, sir.

Q. How much was that piece that had been broken off?

A. I should judge that line was about twenty-five or thirty fathom.

Q. That broken piece? A. I didn't measure it.

Q. You went to the schooner afterwards and got it?

A. Yes, we went to the schooner afterwards and got it.

(Testimony of W. F. Thompson.)

Q. Did you see any flare lights or signals from the "Halcyon" immediately before that line was put on?

A. No, sir, no flare-up lights.

Q. That you saw?

A. No, sir, no signals or anything from the "Halcyon."

Q. You were not observing before the purser came?

A. I was second officer. When we get away for outside ports, the chief officer he goes up.

Q. You were not up? A. No, sir, he goes up.

Q. Were you out when the purser came?

A. I got out when the purser got out, when I heard the vessel was in distress.

Q. When the line parted, what did the schooner do? [252]

A. The schooner dropped his anchor; dropped what anchor he had.

Q. What did the "Niihau" do?

A. We hauled in that line and we took our anchors up.

Q. How far did the "Niihau" go before she dropped her anchors?

A. It takes a little time to draw that line in, but it didn't take very long. I suppose she got outside the end of the railroad wharf there. I couldn't judge that distance.

Q. Now, after that and the "Niihau" had proceeded to drop her anchors, did you observe the "Halcyon"?

(Testimony of W. F. Thompson.)

A. I seen that she was anchored. She was anchored in a safe place, probably.

Q. Did you, after that at any time, notice her drifting or moving? A. No, sir, I did not.

Q. Were you paying any attention to her?

A. No, I wasn't paying no attention to the "Halcyon."

Q. How long after that was it before you did notice that she was moving?

A. I think it was probably about eight o'clock in the morning.

Q. Then what did you observe?

A. I observed that the "Halcyon," we got a line on the boat, the "Halcyon" hoisted up signals of distress wanted our assistance.

Q. You didn't notice her?

A. Our line was already coiled in the boat; we were going toward the "Halcyon."

Q. Why did the "Niihau" get her line in the boat and why was she sending that boat over to the "Halcyon" the second time?

A. I had orders from Captain Bruhn to do it. I don't know the wherefore.

Q. When the "Niihau" dropped her anchors after the line had parted, in what direction was the "Halcyon" from her? A. The direction from her?

Q. Yes. A. When the line parted?

Q. Yes.

A. As near as I could judge, she was right astern.

(Testimony of W. F. Thompson.)

Q. In what direction in regards to the wind and sea? A. Blowing a strong northerly gale.

Q. Do you know where the black boiler is on the beach?

A. I have seen it *sever* times; it belongs to the "Kilauea Hou."

Q. Now, with that boiler in mind, on the beach, can you tell us whether or not an imaginary line drawn from the beach to the "Niihau" when she was anchored was the "Halcyon" in or out of that line and if out, how much.

The COURT.—What do you mean by in or out?

Mr. WARREN.—One side or the other of the line from the boiler to the "Niihau."

A. You mean where was the schooner anchored after the line parted on the "Niihau"?

Q. Yes.

A. Well, I should judge she was anchored on the Waiakea side of the buoy; not on the Hilo side of that buoy but on the Waiakea side of that buoy. I should judge.

Q. About how much on the Waiakea side of the buoy from that line. We imagine the "Niihau" in her position and the boiler on the beach and a line drawn from the boiler to the "Niihau." Where would the "Halcyon" be, on which side? You say on the Waiakea side of the boiler?

A. On the Waiakea side of the boiler.

Q. Very far?

A. I don't think she could be a great deal off that boiler.

(Testimony of W. F. Thompson.)

Q. What direction by compass was the wind and sea?

A. Blowing on the north, I should judge that was; about due north.

Q. What direction by compass was the "Halcyon" from the "Niihau"?

The COURT.—You mean at that time?

Q. At that time when she had dropped her anchor?

A. Probably south or southeast; I didn't have no bearings on her.

Q. When you later saw the "Halcyon" down closer toward the beach, in what direction had she drifted by compass?

A. By compass she drifted to southwards; she was blowing right in. [254]

Q. With the wind and sea?

A. Yes, the sea would help it.

Q. The "Niihau" went a second time to her assistance? A. Yes, sir.

Q. And where did the "Niihau" take up her position at that time?

A. As far as I can judge, the "Niihau" took her position off the end of the railroad wharf ahead of the schooner "Halcyon" so she dropped right down ahead of her and run the tow-line.

Q. Did she pick up anchor to get in position?

A. I wouldn't swear to that, whether she did or not; picked up anchor or not. I know he run the line to her. I wouldn't swear whether she picked up anchors or not.

Q. And the second time when you went in a boat

(Testimony of W. F. Thompson.)

with the line, how did you get to the "Halcyon" that time?

A. The same way as we done the first time; coiled the line ready in the boat.

Q. And how close did your boat come to the "Halcyon"? A. The time with the line?

Q. Yes.

A. I know we was pretty well underneath the bowsprit, close enough they heaved us a line from the "Halcyon"; by the time I got our line on board fast on board the "Halcyon," probably couple of boat lengths off; probably three boats. They could have a heaving-line.

Q. When you got a heaving-line made fast, what did you do with the boat?

A. I waved to the captain that we were already fast; as soon as they told me they were fast aboard the "Halcyon," I waved to the captain of the ship. They heaved the line; we run ourselves right out on the same line.

Q. What is your best judgment of the distance the schooner was from the shore when that line was thrown on? A. When that line was put on to her?

Q. From the beach.

A. My best judgment that schooner [255] was aground astern.

Q. And how far from the beach was that?

A. You mean high-water mark?

Q. From the land. A. From the land?

Q. Merely your best judgment.

(Testimony of W. F. Thompson.)

A. Probably two hundred feet, three hundred feet; probably between two and three hundred feet.

Q. Did you at that time notice the position of that boiler on the beach?

A. No, sir, I couldn't see the boiler at that time.

Q. You didn't notice that?

A. I didn't notice it, no, sir.

Q. How could you tell, what made you believe that the schooner was ashore at her stern?

A. Well, because she had an anchor down and it seemed to me that way. She was kind of headed on toward Wainaku, toward that Hilo mill and it seemed to me that her stern was fast on the sand there.

Q. How much could you see of her starboard side?

A. I could see her whole starboard side, fore and aft.

Q. Could you see anything of her bilges?

A. No, sir, couldn't see anything of her bilges.

Q. What was the motion of the schooner as she lay there?

A. I fancy the schooner was pounding up and down. I know when we got close to her there was one big breaker went right up on her.

Q. How far did those breakers extend?

A. They'd extend right in to the beach but they'd lose their headway.

Q. Did you see any breakers forward of the schooner?

A. Well, I saw, you couldn't call it a regular comber, but she was kind of capping up.

(Testimony of W. F. Thompson.)

Q. But at her stern were there any breakers?

A. At her stern it was still worse. [256]

Q. Could you in any way determine the depth of the water around the stern of the vessel?

A. There was no way for me to take soundings off her stern. There on the sand it would be probably seven or eight feet, probably less; I don't know the draught of the schooner. I think it's about that water there.

Q. How many lines were put on by the "Niihau"?

A. There's a six-inch line and seven-inch line.

Q. Describe what was done after they got the six-inch line on? How did the "Niihau" manoeuvre?

A. Got it on the same as the first time, then gradually they went ahead on the vessel and heaved it, tightened it.

Q. Did the "Halcyon" change her position from pointing toward Wainaku Mill at all?

A. After we had the lines on her?

Q. When was that second line, the seven-inch line put on, before or after she got headed around?

A. If I ain't mistaken, I think that seven-inch line was put on after she got outside the breakers.

Q. Then when the seven-inch line was put on, what did the "Niihau" do?

A. Heaved her taut the same as the other line and got an equal strain on both lines.

Q. Up to that time how did the "Niihau" pull?

A. She was working on her engines and heaving on the anchor chain at the same time.

(Testimony of W. F. Thompson.)

Q. In what way did the "Halcyon" come off? How did she move coming off?

A. Her bow swung up, come right up towards the "Niihau."

Q. Did she come with a rush or come slowly?

A. Just merely a gradual pull. To the best of my judgment, the vessel was aground.

Q. How did she come, fast or slow, by degrees, or how?

A. Well, sometimes her chains would be almost straight out.

Q. I'm asking you, putting your attention to the schooner "Halcyon" [257] and the lines, how did she move when she started coming off? Did she go right along continuously or did she go slowly?

A. She came slowly, slowly, slowly; she came slowly.

Q. How fast and how much at a time?

A. I couldn't tell you how fast.

Q. How long did the pulling continue before she left the beach?

A. How long had they been pulling? That I can't say. I never made no note of that.

Q. You have no recollection at all? A. No, sir.

Q. Would it be nearer one minute or nearer a half an hour or an hour?

Mr. RUSSELL.—It doesn't appear that she was pulling any length of time, pulling her off the beach.

The COURT.—He asked whether it was nearer a minute or half an hour.

(Testimony of W. F. Thompson.)

A. It must have been nearer an hour than half an hour pulling.

Q. Before he got her off?

A. Before he got her afloat. I can't say.

Q. Would it be nearer a minute than half an hour?

A. Nearer half an hour.

Q. Would it be nearer an hour than half an hour from the time the line was put on and the vessel came off? A. That would be nearer an hour.

The COURT.—No, after they commenced to pull.

Mr. WARREN.—After they commenced to pull which? Half an hour or an hour?

A. And before that schooner commenced to move?

Q. Yes.

A. I don't know. It probably would be half an hour before she started to move; I didn't keep no time. It would slip a man's memory, how long.

Q. Was that before or after her bow got around? [258]

A. That must have been after her bow got around.

Q. How long do you think it took before her bow got around before she started? How long had you been working then until she got straight around?

A. It might be probably pulling fifteen or twenty minutes on her before they got her out, heaving and pulling at the same time.

Q. When she was, as you say you believed her, stern ashore and her bow pointing toward Wainaku mill, did you take any note of her anchor chain; what direction that lead from the vessel? A. No, sir.

Q. You didn't notice that?

(Testimony of W. F. Thompson.)

A. No, sir, didn't notice that.

Q. Now, at the time your boat went with the line the second time when you went with the boat with the line, what kind of a sea was it?

A. It was blowing a heavy gale; heavy sea, dirty sea, running; heavy squalls at that time.

Q. Could you give your judgment as to the velocity of the wind?

A. I should judge the wind at this time would reach a maximum of forty miles an hour; the average would be about thirty-five or thirty-six miles an hour; that is my judgment.

Q. Was your boat at that time in any danger?

A. While we were there?

Q. While you were there, yes. A. Yes.

Q. And why?

A. We were right in a heavy sea; if anything happened, we broke away or anything like that, or the boat capsized, there would be loss of life.

Q. How many men were with you in that boat?

A. I really don't know, but I had men enough, as I said before, to double bank the oars; some of the oars.

Q. Two, four, or six?

A. Oh, there was about eight or nine men. You see, five is our boat crew; this was extra heavy weather. [259]

Q. In your judgment, was the steamer "Niihau" in danger at any time?

A. Well, yes; more or less danger all the time.

Q. For what reasons?

(Testimony of W. F. Thompson.)

A. Might have gotten a line in his wheel, for one thing; his anchors might not hold. A good many.

Q. Did she have any steerage way at all during the operations until the boat began to come off? The "Niihau"?

A. You see, a vessel like that, when you're pulling on a vessel like that, you're heaved out ahead and you're heaving on your chains; there's quite a strain on them chains; you're moving slowly through the water; you've got a tow behind; you cannot hold your vessel right up to wind.

Q. Now, if an anchor chain should part under those conditions?

A. There'd be loss of one anchor and chain; that would leave us only one anchor to depend upon.

Q. And if the steamer should part both her anchor chains or one of them parted and the other dragged? A. Well—

Q. What would be the situation at that location where you were?

A. That way it would be serious; if she's towing her, and she's trying to pull that vessel off and you got the wind and sea on one side of her, she's got no headway, she's liable to blow ashore.

Q. What was the draught of the "Niihau"?

A. The "Niihau's" draught is, I think, eleven feet when loaded.

Q. And at that time?

A. At that time the "Niihau" only had a small amount; she was drawing about seven feet forward and about nine feet aft.

(Testimony of W. F. Thompson.)

Q. Do you really know?

A. That is just my judgment, I wouldn't swear to it.

Q. Judging from the position where the "Niihau" was at that time, do you know about how much water you had under you when you were heaving just before the vessel came off?

A. I supposed we had probably about where the "Niihau" was, I suppose [260] we had about eighteen feet; three fathoms; something like that. I didn't take any soundings.

Mr. WARREN.—Cross-examine.

Cross-examination.

Mr. RUSSELL.—Q. How soon after the "Halcyon" anchored, after the tow-line parted, was it that you went out there to make the soundings?

A. Sir?

Q. How soon after the "Halcyon" anchored after the tow-line parted was it that you went out there to make the soundings?

Mr. WARREN.—Oh, I object to that; there is no—

A. No, sir, I went to take soundings after they put the first line aboard of her then I went and took soundings.

The COURT.—Before her line parted?

A. Before her line parted, yes, sir.

Mr. RUSSELL.—Q. Was that after the tow began?

A. We ran the line aboard the vessel, the "Hal-

(Testimony of W. F. Thompson.)

cyon," and then they heaved her tight aboard the "Niihau"; then Captain Bruhn told me to go there and take soundings. I went and took a line and went with the boat's crew and we got in there with a surf-line and we took soundings.

Q. Could you tell at the time you arrived at the "Halcyon" and were making the soundings whether or not the boat was moving? You couldn't tell?

A. I couldn't tell.

Q. And you found from fifteen to eighteen feet of water around her?

A. I found, to the best of my judgment three fathoms forward and then about two and one-half aft.

Q. How far astern of the ship were you when you took the soundings?

A. I didn't go astern. I went in between the mizzenmast.

Q. How far from the stern were you?

A. You mean off the ship?

Q. Yes.

A. About two boat lengths, probably. [261]

Q. Just two of your boat-lengths?

A. Two of our boats.

Q. Now, you spoke about it being too dark to take any measurements from the piles and so forth. Do you recall whether you saw the piles?

A. No, I don't remember whether I saw them piles. It was too dark I couldn't make out anything; too dark for anything.

(Testimony of W. F. Thompson.)

Q. When you went out with the line to the "Halcyon," did you start before or after the distress signals were up?

A. When we was going towards the "Halcyon," then I seen the distress signals going up.

Q. You mean when you were in the steamer's boat? A. The steamer's boat with the line.

Q. And you had already—

A. Had the lines already.

Q. You had already gotten into the steamer's boat and you were on the way?

A. On the way to the "Halcyon."

Q. And how far had you gotten from the "Halcyon"?

A. Well, I don't suppose it was very far we got away; I couldn't say how far away; probably half-way, probably less.

Q. How many men were in that boat?

A. Well, I don't think we had. I think we had the same amount of men. I didn't count them.

Q. Eight or nine?

A. We had a big crew in the boat.

Q. You say you were in danger there. Of course, there is always more or less danger to a small boat in the water?

A. There was extreme danger according to the wind and sea.

Q. There is danger when passengers are taken from one of these steamers to some of these landings where there are no wharves? There's danger there, isn't there?

(Testimony of W. F. Thompson.)

A. Providing there's breakers around there, but smooth water there's hardly any danger.

Q. Were your soundings fairly correct that you made around that [262] "Halcyon"?

A. No, you couldn't judge on that on account of the motion of the boat and sea; I couldn't tell whether it was correct or not. To the best of my judgment, I would say it was three fathoms.

Q. Would you make any allowance from being concerned and worried about your own boat; wouldn't that make a difference?

A. I don't think it would.

Q. Weren't you afraid of yourself, danger to yourself?

A. No, it never entered my mind for a moment.

Q. So there wasn't so much danger but what you didn't think of your own safety, was there?

A. Well, there is danger of the boat going over, capsizing and filling up.

Q. At the same time there wasn't enough danger there to give you thought concerning your own life or your own safety when you were making the soundings?

A. Probably I did feel a little uncomfortable, but I don't know as I'd back out.

Q. Say if the boat had capsized, don't you think you could have swam ashore?

A. No, the trouble is I can't swim.

Q. Could the other men swim, do you know?

A. I guess so; they are all Japanese.

Q. Wouldn't the fact of your having a line be of

(Testimony of W. F. Thompson.)

some measure of assistance to you?

A. We kept her head to the sea.

Q. But in case of capsizing?

A. No. I had two oars already. I was going to jump for them.

Q. You were going to what?

A. If she commenced to capsize, I had two spare oars. I was going to jump for them. No use trying to grab any of your fellowmen, he'd only kick you off.

Q. Supposed you grabbed the line?

A. That wouldn't keep me above the water.

[263]

Q. The boat kept you up?

A. I'd get washed off a half a dozen times.

Q. You've had quite a little experience on the sea?

A. Yes.

Q. Quite a little experience on these boats?

A. Yes.

Q. You can handle one of those boats pretty well?

A. I can't say I'm strong enough to handle a steering-oar, but I could tell a man what to do.

Q. You know your business about handling these boats? A. Yes.

Q. Enough so that you don't feel afraid to go in one? A. Not afraid to go in one.

Q. A three or four foot sea isn't such a bad sea, is it? A. Three or four foot?

Q. Yes.

A. If it goes in rapidly it's kind of wicked.

Q. Now, you spoke about the "Niihau" being in

(Testimony of W. F. Thompson.)

danger. You said in case one of those anchors, anchor chains broke. Just what would have happened outside of the loss of the anchor?

A. There'd be only one anchor to depend upon. If she lost that we wouldn't give her the same pulling she had on the schooner. That chain is liable to snap too.

Q. Then what would have happened?

A. You'd probably lose your steerage way.

Q. Of course, that could be very easily remedied by cutting the towing-line? As far as safety to the "Niihau," in case she did lose her anchors or then if she didn't care anything more about the "Halcyon" but looked out for herself she could have cut the tow-line then she wouldn't be in the danger that was occasioned by the loss of the two anchors?

A. Less danger. The lines might get foul. [264]

Q. As a matter of fact, with her tow-lines cut, she'd be in less danger than with the tow; she'd be freer to steer out, wouldn't she?

A. Yes, but she'd have to let the tow go.

Q. There wasn't so much danger there at the time but what after the "Niihau" was able to get the "Halcyon" straightened out, after she was on the beach as you say, with the six-inch line, but that she sent another line, an additional line after the hardest work was over?

A. I know we sent a seven-inch line besides the six-inch line to the "Halcyon."

Q. Well, there couldn't have been, the situation couldn't have been regarded as so very severe and

(Testimony of W. F. Thompson.)

so very dangerous with regard to sending lines over there to her when it was demonstrated that the boat could go safely with a six-inch line and then they got to work to send a seven-inch line?

Mr. WARREN.—I object to the question as argumentation.

Q. The situation at the time could not have been regarded as so serious with respect to danger in sending a steamer's boat with a line when the boat, when the "Halcyon" had had one line sent to her and got her straightened and then they send on a seven-inch line? Wouldn't the very fact that they sent an additional line indicate to you that the situation could not have been regarded so very serious with respect to danger?

The COURT.—Danger, not to the "Halcyon"?

Q. No, danger to the boat, the crew of the "Nii-hau" to take a line to the "Halcyon"?

A. It was just as dangerous as the first time. Practically more so as wind and sea was increasing before they took that line.

Q. Weren't you people regarding the safety of yourselves at all?

A. Yes, but we seen the other vessel in distress.

Q. Why didn't you try to take the "Halcyon" off with the less amount of danger to yourself by continuing to tow her with [265] the six-inch line?

A. Probably Captain Bruhn thought he had a seven-inch. He thought he might have given that more safety.

Q. More safe to the "Halcyon"?

(Testimony of W. F. Thompson.)

A. More safe to the "Halcyon."

Q. And increasing the danger to portions of his own crew, is that your opinion?

Mr. RUSSELL.—That's all.

Redirect Examination.

Mr. WARREN.—Q. I want to be very clear. The soundings that were taken by you were when you went out the first time?

A. That was the first time. The first time when I went out; when they put the first line aboard. I took no soundings when the vessel was ashore.

Q. Now, as to height of seas, how high would you say these rollers or breakers were around the "Halcyon"?

A. I couldn't judge the first time, the morning when we went there.

Q. When you went the second time, you went in the boat with the line?

A. After the "Halcyon" hoisted up signals of distress?

Q. The seas at that time were about how high?

A. I couldn't give any judgment of that. I know they were running pretty fast.

The COURT.—When you were taking soundings, did you get into the breakers at all?

A. After we got into the breakers, I went as far aft as I possibly could and took soundings.

Q. Now, you say you can't steer?

A. No, sir, I can't steer.

Q. And your crew Japanese?

(Testimony of W. F. Thompson.)

A. Well, no; seemed I had one native there, a big, heavy fellow. He was boat steerer. The rest were Japanese.

Q. You wouldn't think there was any danger at the second time [266] you took a line if everybody could swim, including yourself, even though the boat did capsize?

A. I think, your Honor, it would take a pretty good man to swim through that sea running that way. There was danger of losing the boat, danger of men getting underneath the boat, getting hurt.

Q. On the first occasion when the line parted, when you were towing the "Halcyon" and the line parted, how far was the "Halcyon" towed before the line parted?

A. Oh, before the line parted, to the best of my judgment, the "Halcyon" was towed almost to the end of the railroad wharf.

Q. The outside end?

A. The outside end of the railroad wharf, yes. That is where he dropped his anchor; that's pretty near safe anchorage out there.

Q. What was the tide, high tide or low tide?

A. I don't know the tide.

Q. Now, in regard to the seven-inch line which was taken to the "Halcyon" when she was aground on the beach near the boiler the Kilauea-Hou boiler. That was taken her after her bows were pulled round? A. After they were pulled around.

Q. Who took that second line?

(Testimony of W. F. Thompson.)

A. The boat's crew.

Q. You didn't go?

A. No, I came aboard then.

Q. And did they start pulling full speed after that line was fast? A. That I couldn't say.

Q. You don't regard there was any real danger to the "Niihau," do you, at any time with steam up?

A. I should think there was danger in there at night; there's danger of losing anchors.

Q. I mean danger to the hull, to the ship.

A. Something might happen to the engine.

Q. That's a danger that always exists.

Mr. RUSSELL.—That's all. [267]

Mr. WARREN.—Q. Is there any difference in that point of danger of the engines breaking down between ordinary operations and where the engines are being operated under circumstances such as these? Is there any greater difficulty or requirement made upon the engines?

A. The greater difficulty made upon the engines in a case like this, yes. You want to use every pound of steam you've got; more strain put on and everything else.

Mr. RUSSELL.—Q. Did I understand you to say, Mr. Thompson, that the seven-inch line was put aboard the "Halcyon" after you got her off the beach?

The COURT.—No, after the bows were swung around.

A. After we hove taut on the six-inch line.

Testimony of W. C. Bruhn, for Libellant.

Direct examination of W. C. Bruhn, a witness on behalf of libellant, called and sworn.

Mr. WARREN.—Q. Captain Bruhn, you are master of the Inter-Island steamer “Niihau”?

A. Yes, sir.

Q. And you were in the month of January, 1914, when the “Halcyon” got in trouble in Hilo Bay?

A. Yes, sir.

Q. Now, what was the first knowledge or information which you had that the “Halcyon” wanted assistance?

A. From Purser Moreton. He came off and informed me that there was a schooner ashore at the mouth of Waiakea River and wanted assistance.

Q. What did you do?

A. I started over immediately.

Q. At that time where was the “Niihau”?

A. The “Niihau” was lying out in Hilo Bay.

Q. And what did you do?

A. We informed the engineers to get ready which they said they were all ready, and heaved up anchors and steamed over towards the Hilo railroad wharf; between the end of the Hilo railroad wharf, we dropped both anchors with about [268] ninety fathoms of chain each and then let her drift down towards the schooner as near as I thought it was safe.

Q. Now, in drifting down toward the schooner,

(Testimony of W. C. Bruhn.)

where did the "Niihau" pass, on which side of the buoys by the wharf?

A. This side of the wharf the side she passed, sir.

Q. What buoys?

A. We anchored in between the buoy of the end of the wharf; that's No. 3 buoy counting the buoys from shore.

Q. Counting the buoys from shore?

A. It would be No. 3 buoy counting the buoys from shore. Between that buoy and the railroad wharf we dropped our anchor.

Q. I'll ask you, Captain, if you'll make a sketch here of the wharf and the buoys and the place where the "Niihau" dropped her anchors. In drawing this map I want to ask you also to locate the later positions of the "Halcyon."

A. (Witness draws.)

Q. We'll mark this wharf as wharf, railroad wharf. The buoys, the forward one you call No. 1.

A. Count them from the shore.

Q. From shore, No. 1. The next one, No. 2. And the next one, No. 3. Now, you've made a little mark here toward the railroad wharf. What is that?

A. The old warehouse down there.

Q. What do they call it?

A. We used to call it the old boat landing; then again they call it the old Hackfeld warehouse.

Q. Then we'll mark that as old Hackfeld wharf or warehouse? A. Warehouse.

Q. Where is Waiakea River?

(Testimony of W. C. Bruhn.)

A. This is the Waiakea River here. These are the piles here.

Q. Mark these piles. Now, will you locate the place where the "Niihau" dropped her anchors for the purpose of backing in toward the schooner. Just mark a little, two crosses indicating her anchors. A. (Witness marks two crosses.) [269]

A. That is one cross for each anchor.

Q. When the chain had been paid out, where was the "Niihau"?

A. The "Niihau" was about off here.

Q. Will you put a little arrow to indicate which is the bow of the "Niihau"?

A. (Witness marks.)

Q. And connect that bow with the two anchors?

A. (Witness marks.)

Q. What was the length of your line from the "Niihau" to the schooner. First, can you locate the schooner? Could you see her at that time of the night? A. Yes, sir.

Q. Did she have any lights? A. No lights.

Q. No lights in the cabin? A. No, no lights.

Q. Do you know where she was?

A. She was about this way. Here is the end of the railroad wharf here and she was about in this direction here.

Q. Will you put an arrow there to indicate her bow? A. (Witness marks.)

Q. Now, going back, we will mark the "Niihau" with the word "Niihau" and the "Halcyon" with the

(Testimony of W. C. Bruhn.)

word "Halcyon." How then was your line sent to the "Halcyon"?

A. We coiled the hawser in the boat and then bent another line on to that and then paid out then the boat pulled over to the "Halcyon" and passed the first line aboard.

Q. Did that line pass on the inside or outside of buoy No. 1? A. No, passed on the outside.

Q. Then is your location of the "Halcyon" about correct?

A. Well, of course, the way this is here, the "Halcyon" might have been a little further down.

Q. A little further down toward the piles?

A. Yes, towards the piles, but the line come through here.

Q. Just on the Hilo side of buoy No. 1?

A. On the Hilo side, yes, of buoy No. 1.

Q. Shore side rather?

A. Well, that's the Hilo side. [270]

Q. What size line was it? A. Six-inch line.

Q. And new or old? A. New.

Q. What length? A. One coil, 120 fathoms.

Q. And do you know how much of it was used in making fast on board the "Niihau" after you had hauled it in and got the end of the six-inch line in? How much did you use in making it fast on the "Niihau"?

A. On the "Niihau," I should say somewhere around between twenty to twenty-five fathoms.

Q. After the six-inch line had been hauled taut

(Testimony of W. C. Bruhn.)

between the two vessels, what, in your judgment, was the distances between the two vessels with your line taut as you were pulling?

A. That means the line that was fastened on the "Halcyon"? Just the distance between the "Halcyon" and the stern of the "Niihau"?

Q. And allowing for any part of the coil on board either vessel.

A. I should judge between sixty and sixty-five fathom. That is, from the end of the stern chock to this vessel's bow chock.

Q. Now, were any soundings taken as to the water around the "Halcyon" in the position as shown on this sketch?

A. Yes, sir; sent the second mate and the boat's crew over there with a lead line to take soundings around the "Halcyon."

Q. Now, was that before or after you had gotten the six-inch line aboard the "Niihau"?

A. That was after.

Q. How soon after?

A. Oh, just about twenty or twenty-five minutes; something like that. By the time they got back and got in down there, I should judge about twenty or twenty-five minutes.

Q. How long a time did the "Niihau" pull on the "Halcyon" before the line parted?

A. That was just about daylight. I should judge that was somewhere around a little after six.

Q. How many hours or minutes had you been pulling before the line parted?

(Testimony of W. C. Bruhn.)

A. We had been pulling then in the neighborhood of forty-five minutes; forty or forty-five minutes; [271] something like that.

Q. Now, the "Halcyon" is marked on this sketch which we will mark position No. 1. Will you now mark the position of the "Halcyon" at the time the line parted?

A. When our line parted, the tow-line? (Witness marks.)

Q. That is where the "Halcyon" dropped anchor?

A. Yes.

Q. We'll mark that "Halcyon" No. 2. Where was the "Niihau" at that time? A. (Witness marks.)

Q. We'll mark the former position of the "Niihau" as No. 1 and this second position you have just given as No. 2. That was the time the line parted. What did the "Halcyon" then do?

A. Dropped her anchor.

Q. Do you know what parted that line? Do you know yourself? A. No. That parted—

Mr. RUSSELL.—Just a moment.

Mr. WARREN.—Did you say anything to the master of the "Halcyon" about the line?

A. I hollered. I don't know if I'm allowed to use the word in court which I said.

The COURT.—Yes. What did you say?

A. I said to him, "What in hell did you cut my line for?"

Q. Did you see him?

A. I hollered to the captain from the after deck

(Testimony of W. C. Bruhn.)

of the "Niihau"; anyhow to the man that was there. I couldn't tell the captain from anyone else.

Q. Could you hear any answer from him?

A. No.

Q. Could you hear if there had been any reply?

A. No.

Q. Were you observing the "Halcyon" at the time the line parted, and did you see anyone on board make any signals? A. No.

Q. Do you know where the captain was on the "Halcyon"? A. No. [272]

Q. Or anybody that you took to be the captain?

A. Nobody on the fo'c's'le excepting this man that threw his arms out.

Q. When did he do that?

A. Just about when the line parted.

Q. How did he throw his arms out?

A. Throw them out like that. (Indicating by raising arms parallel to the floor then dropping them down.)

Q. Was that a kind of a signal, a customary signal? What would you take that signal to mean?

A. That is generally used as a signal.

Q. What's that signal for?

A. Maybe, in case we have anything, for us to let go; otherwise to let go an anchor or anything like that; used for both purposes.

Q. Where was that man standing on the "Halcyon"? A. On the fo'c's'le-head, sir.

Q. Did you make any signal in reply?

(Testimony of W. C. Bruhn.)

Mr. RUSSELL.—I object to that as it doesn't appear that the signal was made to him or meant for him.

Mr. WARREN.—Withdraw the question. Did you make any signal to the "Halcyon"?

A. No.

Q. What did the "Halcyon" do immediately upon the line being parted or let go?

A. Dropped her anchor.

Q. What did you do? A. Dropped my anchors.

Q. Did you drop right where you were, or did you go ahead?

A. Dropped right where we were because as soon as the line parted the engines were stopped and as soon as he dropped, we almost dropped our anchor at the same time; pretty near the same time.

Q. How many anchors did you drop?

A. We dropped one anchor at that time.

Q. The "Halcyon" was in the position you have marked number 2? A. Yes.

Q. And the "Niihau" at No. 2? A. Yes, sir.
[273]

Q. Did you pay any attention to the "Halcyon" after that?

A. Yes. Standing and looking at her.

Q. What did you observe?

A. Well, after a while I saw her dragging in shore.

Q. How long after the line had parted and she dragged anchor was it that you saw her dragging?

A. About fifteen or twenty minutes.

(Testimony of W. C. Bruhn.)

Q. Could you determine then whether she was dragging or just what she was doing?

A. Yes, I noticed that she was dragging absolutely then and we started to get our line ready again to run to her.

Recess.

Mr. WARREN.—With the Court's *permiss*, I would like to withdraw Captain Bruhn so that Captain Mosher can go on and be relieved this afternoon. He is anticipating some work to-morrow and wants to get through.

Testimony of F. Mosher, for Libellant.

Direct examination of F. MOSHER, a witness on behalf of libellant, called and sworn.

Mr. WARREN.—Q. Captain Mosher, you are the pilot of this Hilo harbor? A. Yes, sir.

Q. And also harbor-master? A. Yes, sir.

Q. And was pilot and harbor-master January, 1914? A. Yes.

Q. At the time the schooner "Halcyon" was in trouble in Hilo Bay? A. Yes.

Q. Did you observe the schooner on the morning that she was in trouble? A. Yes, sir.

Q. When did you first notice her?

A. I think it was about seven o'clock that I first took notice of her first. [274]

Q. Where were you then? A. Home.

Q. And where was the schooner?

A. It appeared to me to be halfway down the line of the wharf where she was lying. I should say six

(Testimony of F. Mosher.)

hundred feet inside the end of the wharf.

Q. How far from the mouth of Waiakea River?

A. I should think about five hundred feet.

Q. At that time, what did you observe?

A. I observed that she was dragging her anchor slowly, and as soon as I seen that I went on down to the wharf.

Q. Where did you go?

A. I went down to the old railroad wharf.

Q. Sometimes called the old Hackfeld wharf?

A. Yes, old Hackfeld wharf.

Q. And what time did you get there?

A. About eight o'clock.

Q. You went right down from the house?

A. Yes.

Q. Where was she then?

A. In about the same place.

Q. And how long did you observe her from that position?

A. Oh, I think probably fifteen or twenty minutes.

Q. Did she change position?

A. She dragged a little; she was ranging back and forwards but she altered her position and went a little towards the beach.

Q. In what direction was she drifting or dragging?

A. She was dragging in about south. She was heading at about north.

Q. What was causing her to drag?

A. Well, wind and stress of weather; heavy sea.

Q. What kind of weather was it?

A. Pretty nasty weather; what I would call very

(Testimony of F. Mosher.)

nasty weather; [275] blowing strong.

Q. What kind of sea? A. Heavy sea.

Q. Any breakers?

A. The breakers were inside of her at that time.

Q. What would you judge would be the velocity of the wind at that time?

A. That's pretty hard to say. I should think it was blowing all of forty miles an hour and probably more.

Q. You observed from there for a time and then where did you go?

A. About that time she ran up her two signals N-C. I was waiting for those. As soon as I seen those two signals I went over to the boat-house and got into a boat. When I seen those signals it was somewhere around eight thirty-five.

Q. Did you note that time with anybody else?

A. I noted that time with the man who was tending bar at the Waiakea saloon at that time.

Q. And you really went to your office first?

A. No, I didn't go to the office; my office was situated in part of the Waiakea saloon building at that time.

Q. The flags were up before you left in the boat?

A. Yes.

Q. And you went out to the vessel? A. Yes.

Q. And how long did it take to get out?

A. Probably five or six minutes; it is only about three or four hundred yards.

Q. When you got out of the mouth of the Waiakea River there where you could observe the "Halcyon,"

(Testimony of F. Mosher.)

could you see then whether or not she had any lines on her?

A. No, I couldn't see very well. I was right astern of her; I couldn't say whether there was a line on her or not.

Q. You mean her stern was toward Waiakea River? A. Yes. [276]

Q. And her bow was away from it? A. Yes.

Q. And her bow heading toward what place?

A. Pointing out north, about somewhere about Papaikou mill or Paukau; she wasn't heading exactly straight out due north and south.

Q. When you got to her did you then observe whether there were any lines on her from the "Niihau"?

A. I was about ten or fifteen minutes before I got to her, got alongside of her. There was a line on her then.

Q. Prior to that you didn't notice? A. No.

Q. Did you observe a small boat moving between the "Niihau" and the "Halcyon" at that time?

A. No.

Q. So that as far as you personally are concerned, you didn't know whether those signals, whether the flags were put up before or after the line was put on, do you? A. No, I couldn't say.

Q. When did you first begin to note the operations of the "Niihau"? After you were on board?

A. After I was on board.

Q. At that time what sort of a line did they have on? A. I think it was a six-inch line.

(Testimony of F. Mosher.)

Q. Now, at that time, what was the position of the schooner as respects the beach?

A. Well, when I got aboard of her the first words I spoke to the captain, asked him how much chain he had out; he said, "I've got all my chain out"; I went forward on the fo'c's'le-head. I seen the line was fast and she was on the beach. I felt her distinctly; I told the captain she's touching the beach.

Q. Was there anything else that enabled you to determine?

A. Nothing more than the shock, that distinct shock.

Q. And did you observe, going back. You were observing from [277] the old Hackfeld wharf, what her angle was; in other words, what direction was the "Halcyon" pointing as she was going backwards?

A. I couldn't tell that after the time I left the Hackfeld wharf and got into the boat.

Q. I mean before you left the Hackfeld wharf while you were observing her there, was her movement, direction different? A. No.

Q. After that when you were out with the small boat, was that position the same?

A. No, it had altered; she had swung a little towards the land more and was heading probably north.

Q. And approximately how many points to the beach?

A. The beach line runs about north and south; probably she was running about three points inside

(Testimony of F. Mosher.)

the beach; the north line would take her to the Peepeekeo light.

Q. When you went forward and observed her anchors, what direction were her anchors leading from the bow? A. Right straight ahead.

Q. Toward the "Niihau"?

A. The "Niihau" was anchored right straight ahead of her.

Q. Then when the vessel changed position, was there any difference, as you say, the bow swung; did that make any difference with her anchor chains?

A. They swung off to the starboard side, naturally.

Q. Now, at the time you got on board what was the situation with regard to the handling of the six-inch line? What were they doing with it at that time?

A. The six-inch line was fast to the mast when I got aboard.

Q. What were they doing, heaving or pulling?

A. They were not doing anything; they were standing around there.

Q. What was the "Niihau" doing?

A. That I don't know what she was doing. She was too far away from me. [278]

Q. When you got on, she was heading, as you say, farther over. Now, how long was it before her bow got around straight again, pointing toward the "Niihau"?

A. Well, she had forty-five fathoms of chain cut and I think that's all; she had an old-fashioned wind-

(Testimony of F. Mosher.)

lass. I think it takes twenty-five minutes to heave one chain. As soon as they heaved it through, she come around again.

Q. During that time was the "Niihau" doing anything with her line? A. No.

Q. As far as you could observe?

A. As far as I know. The line was taut.

Q. You don't know whether she was steaming or what?

A. I don't think she was steaming because I would have seen the swash of the water from the propeller.

Q. That line continued taut? A. Yes.

Q. At what time did they put on the seven-inch line, before or after she got around.

A. Before what?

Q. The "Niihau" put on the seven-inch line, was that before or after she got her bow around, the "Halcyon"?

A. I don't recollect of any seven-inch line going on.

Q. You only recall a six-inch line?

A. The six-inch line was already there when we went aboard. After the vessel got safe there was another line came on board there. Then the "Niihau" commenced to tow.

Q. You think she was free of the beach before they got the seven-inch line aboard?

A. Yes. I say I didn't feel her touch any more.

Q. Then, in your judgment, would her anchor and chain as she held them then, have held her without the line from the "Niihau"? A. No. [279]

Q. Why not?

(Testimony of F. Mosher.)

A. Because the plain truth was she dragged in from where I seen her and the reason she didn't drag any further was because her stern was on the beach. The anchor was simply no good to her.

Q. From her action there and the dragging which you observed, could you have determined what position she would have *have* been in?

A. I should think if the "Niihau" hadn't had any line on that vessel, and her stern in the position it was, within a few minutes she would have swung around broadside to the beach because her anchor wasn't doing any good to her at all.

Q. When a vessel goes broadside on the beach is there, in your judgment, is it a very difficult operation to get her off?

A. Oh, yes. You've got to pull the whole length of the vessel against the sea to get her off.

Q. Will you briefly state your experience in following the sea? How long?

A. I've been to sea since I was seven years old. I'm sixty now.

Mr. RUSSELL.—I'll state that the captain is qualified to answer any question touching an opinion as to seamanship or navigation.

Q. Would I understand you that the "Niihau" began her towing of the vessel after she got the second line on?

A. That's what I think she did. I couldn't tell, but the "Halcyon" commenced to go through the water after the second line was put on. It must have been towing.

(Testimony of F. Mosher.)

Q. How far out did the "Niihau" take the "Halcyon" when they began towing?

A. Towed her out, I should think, about a thousand feet outside the end of the Inter-island wharf.

Q. And then what occurred?

A. We dropped the anchor.

Q. On board the schooner?

A. On board the schooner.

Q. Was any message of any kind sent to the steamer after stopping towing? [280]

A. His anchor was dropped and we sent out the full length of chain. I seen it wasn't holding. I asked him what he proposed to do. He asked me what I thought about it. I said, "Your anchor won't hold you in this gale where you are." He and myself got into the small boat and went over to ask Captain Bruhn if he would stand by until the weather abated; Captain Bruhn said, "All right," and he done so.

Q. And how long did the "Niihau" stand by? Till the morning?

A. I think she was there from about ten or nine or ten until some time in the same evening. I'm not certain of it. I don't know when she did let go.

Q. She might have held on all the succeeding night as far as you know?

A. As far as I know. She hadn't hold of her in the morning.

Q. Will you describe the weather conditions there outside and around the "Halcyon"?

(Testimony of F. Mosher.)

A. Just common sea breakers like what breaks up on the beach. They broke in pretty heavy sometimes; fell in six or eight feet and sometimes higher.

Q. How high?

A. I should say about six feet high.

Q. How would the size of those compare with ordinary breakers?

A. You've got to have a heavy gale to make any breaker on the beach at all.

Q. Now, was the schooner anywhere near the breakers at that place?

A. She was right in the breakers; her stern was in the breakers at that time. When I went to get alongside of her the boat was down eight or nine feet from the rail one moment and the next moment we were about even with the rail.

Q. Have you anything to base an opinion upon as to how deep the water was at her stern?

A. I know what depth of water is there at medium tide. There was about seven feet aft, and where her bow was, about eighteen feet; measuring off the distance of the "Halcyon," I think she is about 146 feet, you get about 18 feet of water. [281]

Q. When you went over with the captain of the schooner, Captain Olson, to ask Captain Bruhn if he would hold on, did you hear any conversation between Captain Bruhn and Captain Olson as to the line having parted or been cut? A. No, sir.

Q. Do you recall anything of that kind being said?

A. No, sir.

(Testimony of F. Mosher.)

Q. There may have been something said?

A. There might have been. I didn't hear it.

Cross-examination.

Mr. RUSSELL.—Q. Captain, you say the vessel was ranging back and forward on its anchor chain?

A. Yes.

Q. And did that continue at the time that you thought she was touching? A. No.

Q. Well, now, you say that you thought, you concluded that she was on the beach because you felt a pounding? A. Yes.

Q. And was that a violent pound?

A. What do you mean by violent?

Q. Would it indicate that she was very much on the beach?

A. It indicated to me very forcibly that the vessel's stern was being lifted and pounded on the beach.

Q. You say the bottom goes down rather rapidly there? A. It goes down rather sloping, yes.

Q. Would you say there was very much of that vessel on the beach when she pounded?

A. I shouldn't say there was very much of it on; she was more against the beach than anything else.

Q. The abruptness of that slope made it, of course, easier to tow the vessel off from it?

A. I couldn't say that.

Q. What's that?

A. I couldn't say that, whether it made it any easier or not. [282]

(Testimony of F. Mosher.)

Q. Of course, it would mean there was less of her to pull off?

A. Yes, sir, I think she would come off a little easier than if she had been half of her length on, probably.

Q. You say that were it not for the line from the "Niihau" she would have grounded broadside on the beach?

A. I think that would have been the natural consequence.

Q. What would have followed after that?

A. That's hard to say because the "Halcyon" is a very old vessel. I don't think she would have stayed there very long without something serious happening; he would have broken up.

Q. The beach there is sand?

A. Yes, of course, in keeling over, she would have keeled over broadside, full length on the beach and the sea would have pounded on her bottom.

Q. What is your best opinion, considering the weather as it was the following day as to how long she would have lasted?

A. That's pretty hard to say. The vessel was partly loaded with lumber; naturally that lumber would have gone over. These seas lifting that vessel, I don't think she would have lasted very long.

Q. Do you think she would have lasted throughout that day?

A. No, I do not; not without some part of her breaking.

Q. You say with that abrupt slope, if she had

(Testimony of F. Mosher.)

thrown over, you think that the lumber would have fallen out of her? A. Not until she broke up.

Q. Of course, she wouldn't have broken up as rapidly as she would if that had been a rocky shore?

A. No, I can't say as she would have if it had been a rocky shore; she might have gone in between the rocks and been immovable. I couldn't say whether she would break up quicker on a rocky beach.

Q. Would the fact of her having an anchor make any difference with regard to the likelihood of her breaking up? A. No.

Q. It would not make any difference at all?

A. No. [283]

Q. Captain, what from your familiarity with the sea and conditions just at that time, what *would from* the lumber falling into the sea? Would it have washed ashore?

A. Well, it would wash ashore and wash back again the same as anything else washes back with the inflow and outflow of the surf.

Q. And as the sea would subside eventually it would have drifted toward the shore?

A. It would have drifted, if it had followed the current, it would have drifted toward the foot of Wainuenue Street; that's my experience with the current. How much of it would have drifted there, it's pretty hard to say.

Q. Do you believe that if the lumber had gone overboard after the ship had broken up, that with men employed there to haul in what they could, that

(Testimony of F. Mosher.)

a substantial part of that lumber could have been saved?

Mr. WARREN.—I don't think that's within the range of cross-examination.

A. Very little of it.

Mr. RUSSELL.—I will withdraw the question. That is all.

Redirect Examination.

Mr. WARREN.—Q. You just made a mention of current; current from which river did you mean, or had the Wainaku River anything to do with that current?

A. I don't think it does. This bay is made in a crescent shape; she was on this horn; she would naturally run in this way.

Q. The flotsam and jetsam in the water, where does—

A. Beaches out here at the foot of Wainuenue Street. After a storm you can go down there and see the beach for probably a thousand feet all piled up with debris.

Mr. WARREN.—That's all.

The COURT.—What was it that held the bows of the "Halcyon" around toward the sea?

A. The "Niihau's" line.

Q. Was the "Niihau's" line aboard before you got there? A. It was, yes. [284]

Q. Were they hauling on it?

A. I don't know what they were doing with the "Niihau." The first thing I done was to commence to heave in chain; as I heaved, I suppose the "Nii-

(Testimony of F. Mosher.)

hau" heaved on hers.

Q. By you heaving on the chain could you pull the bows around?

A. I don't think so; our anchor was going right through the sand. I don't think it was doing any good.

Q. What prevented the bows from swinging around on the beach before you got there?

A. That I can't say unless it was the "Niihau's" line. When I went aboard her she was swung around this way. I put my hand on the anchor chain this way and I told the captain, "Your anchor is dragging." I suppose the combined strain on that anchor and the "Niihau's" line kept it from going on.

Q. When you went aboard where did you climb over the rail? A. Aside the mizzen rigging.

Q. Which rail? A. The starboard rail.

Q. You went on the windward side?

A. I couldn't get around to leeward underneath her stern, she was so close to the beach I couldn't get underneath her stern.

Q. That is the first you saw of her trouble when she was on this beach? You didn't see anything about the affair of the early morning?

Mr. WARREN.—Q. You just said, Captain, she was so close to the beach you couldn't get behind her. How far was she from the beach?

A. I didn't think it was safe to go around her stern; I would have been right in the surf if I had gone under her stern.

(Testimony of F. Mosher.)

Q. Could you give any estimate at all of that distance, approximately; not exactly?

A. I should think from where the breakers stopped; that is, before they run up the beach and to her stern, it wasn't over a hundred and fifty feet.

Q. Not over that?

A. I don't think it was over that.

Q. How far was that, more or less, from that black boiler on the beach, the old Kilauea-Hou boiler?
[285]

A. A little on the port quarter down towards the lighthouse.

Q. On the lighthouse side?

A. On the Hilo side.

Mr. RUSSELL.—I omitted to ask you when you first saw the distress signals, did you see the "Nii-hau" there? A. Yes.

Q. And did you see one of the steamer's boats anywhere around? A. No.

Q. And can you say definitely as to whether or not at the time she had the distress signals up there was any boat on its way to her?

A. I can't say for certain.

Mr. RUSSELL.—That's all.

The COURT.—Captain, you said something about the beach shelving gradually to about eighteen feet?

A. Yes.

Q. If her stern was against this shallower part, near the edge of it, it would be quite a different thing pulling her off than if she was further back?

A. Yes.

(Testimony of F. Mosher.)

Q. That is, if there was a slope?

A. I understand.

Q. It would be quite different? A. Yes.

Q. Can you say where that slope began?

A. I think. You must understand me. It runs very gradually. I think her bow was in about seventeen or eighteen feet of water, and if there hadn't been any sea where her stern was, she'd have been in about eight or nine, maybe ten, feet of water. It was pretty hard to tell the depth of water when she's jumping up and down.

Q. From the shore, the slope of the sea bottom is pretty even?

A. Very even, yes; runs down pretty gradual slope, but pretty steep.

Q. If we assume that the "Halcyon" was drawing twelve feet of water [286] would that assumption aid you in determining the depth of water either forward or aft?

A. No, you couldn't tell anything about what she was drawing then with that sea on.

The COURT.—You've been here a long time. The current of the Wainaku runs and swings on shore and goes back?

A. Yes.

Q. Does that, according to the time of year or condition of tides or anything, does it change the sea bottom so *that* is shallow a month later would be deeper? A. I don't think so.

Q. If you will look at that chart, you'll see the four-foot and the two-foot line is very crooked. Do

(Testimony of F. Mosher.)

you suppose that irregular depth is permanent?

A. I don't go much on that chart; those soundings. Now, the only thing that I have found out, the current sets out there in a straight course to about the end of the Inter-Island wharf then it goes towards Cocoanut Island and some goes towards Hilo; but I haven't found in taking vessels there where it's made any deposits or changed it materially.

Q. The Wailou River that runs out at Cocoanut Island?

A. That runs out to the reef and strikes the reef and goes back to Cocoanut Island; that runs to where the German vessel is lying now.

Q. The current of the Wailuku River, has that been changed at all by the wharf?

A. I don't think so. I don't know what it was. There has been no change since I've been here.

Mr. WARREN.—That's been how long?

A. Six years and four months.

**Testimony of Captain Bruhn, for Libellant
(Recalled).**

Continuing direct examination of CAPTAIN BRUHN. [287]

(Capt. Bruhn resumes the stand.)

Mr. WARREN.—Q. Can you recall, Captain, about what time of the morning it was that you first observed the "Halcyon" appearing to drag her anchors after you had towed her out and she had dropped anchor and you had dropped yours?

A. Well, that was somewhere around seven

(Testimony of Capt. Bruhn.)

o'clock, I think; somewhere around seven o'clock.

Q. And what preparations did you make?

A. I started right in to get our line ready and watching the vessel at the same time.

Q. Now, in watching her, could you determine certainly whether she was drifting or not?

A. When I commenced to notice after that that she was dragging more or less especially when this heavy, now and then the sea is little larger; when some of those big fellows come in you could see her dragging in.

Q. How long did you observe her doing that before you moved the "Niihau"?

A. Well, I should say about fifteen or twenty minutes we was watching her.

Q. Then you did what?

A. Hove up and dropped our anchor on the Hilo side of that first buoy off the wharf there little on the outside or between the two buoys.

Q. Can you now go back to this change, Captain, that you were making before, and mark the position that "Niihau" took the third time; that is, when you had picked up your anchors and moved around and dropped them again? A. Yes.

Q. You were lying here at "Niihau No. 2" on this sketch when you observed her dragging and then you picked up and went where?

A. Went in about the position where the schooner is now.

Q. That would be "Halcyon—2"?

A. "Halcyon—2" yes.

(Testimony of Capt. Bruhn.)

Q. And you dropped anchor?

A. Dropped two anchors there.

Q. How much chain?

A. Ninety fathoms on each anchor. [288]

Q. Then, at that time where was the "Halcyon"?

A. The "Halcyon" was drifting.

Q. Now, will you locate the approximate position of the "Halcyon" at the time you dropped your anchors at the point "Halcyon—2"?

A. Now, this is the river here.

Q. You are now drawing the beach line?

A. Draw along here to show the beach line. The "Halcyon" drifted down in this direction, a straight line; that's her anchors. And with the wind and one thing and another she dragged in a straight line for the beach.

Q. About where were you when you dropped your anchors at "Halcyon—2"? A. She was going in.

Q. "Halcyon—2" was the place you dropped your anchor? A. That is where I dropped.

Q. When you dragged up at the end of your ninety fathoms where was the "Niihau"?

A. The "Niihau" comes pretty well down here; about here.

Q. Just make a mark here to indicate the "Niihau." A. A cross?

Q. Same as before, a line with an arrow at the head of it. A. (Witness marks.)

Q. Mark that "Niihau No. 3."

A. (Witness marks.)

Q. And the "Halcyon" was then?

(Testimony of Capt. Bruhn.)

A. The "Haleyon" was about in this direction.

Q. And in approximately that location?

A. Approximately that location.

Mr. WARREN.—The witness marks a point we will call "Haleyon No. 3."

Q. When you dropped your anchors and brought up with the "Niihau" in the position No. 3, what did you do?

A. Then we coiled the line in the boat and the crew in and asked [289] them if they was willing to go; told the second mate to go with them; Mr. Thompson. He says that the crew wouldn't go and he wouldn't go.

Mr. RUSSELL.—That's objected to.

A. Your Honor, Mr. Russell said the "Niihau" wasn't in danger and the boat's crew wasn't in danger. Now, I claim the "Niihau" boat's crew was in more danger than the schooner's crew was.

The COURT.—Yes, that's really not the point. I will sustain the objection.

A. I'd like to see Mr. Russell in that boat.

Mr. WARREN.—What preparations, Captain, and conditions. Under what conditions did the crew of the "Niihau" go in that boat with the line?

Mr. RUSSELL.—That is objected to as being indefinite and vague; calls for the conclusion of the witness.

The COURT.—It is a very vague question.

Mr. WARREN.—Withdraw it. Captain, did any of the men on the steamer "Niihau" decline to go in that boat when asked to do so?

(Testimony of Capt. Bruhn.)

Mr. RUSSELL.—That is objected to upon the ground it is immaterial; not binding upon the respondent; and irrelevant, not being evidence as to the conditions, or at most hearsay.

The COURT.—It is also a leading question.

Mr. RUSSELL.—Also for that, too.

The COURT.—Sustain the objection.

Mr. WARREN.—Q. Captain, will you describe the conditions of wind and sea which were prevailing at the time you were preparing to send the small boat to the "Halcyon" with that line?

A. Yes. It was blowing a gale of wind.

Q. Blowing what? A. Blowing a gale of wind.

Q. About what velocity of wind, would you say?

A. A northerly direction; I should judge between forty and fifty miles. [290]

Q. And what about the sea?

A. The sea was pretty dirty sea.

Q. What was the size of the rollers, the breakers, if any?

A. Well, I should judge some of them they come around about six feet or so.

Q. Were there any breakers in the vicinity of the "Halcyon"?

A. Where the "Halcyon" was at this time here?

Q. When you were preparing to send that boat?

A. When we were preparing to send the boat she was just clearing.

Q. She was a little further back than position No. 3, is that right? A. This is "Halcyon No. 2."

Q. That's where you dropped your anchor?

(Testimony of Capt. Bruhn.)

A. Yes.

Q. And then the "Niihau" swung out paying out your chain until you got to "Niihau No. 3"? And at that time you say the "Halcyon" was at — No. 3. Was that approximately where the "Halcyon" was when you were getting ready to send your boat with the line?

A. When we were getting ready to send our boat with the line.

Q. Were there any breakers in her vicinity?

A. Yes.

Q. Did she go any further ashore?

A. She commenced to go; when our boat commenced to go she settled in gradual. Then I noticed her begin in swinging her bow towards town.

Q. Did you experience any difficulty aboard the "Niihau," Captain, in getting a crew to man that boat?

A. That is objected to as immaterial, irrelevant, not binding upon the respondents, calling for a conclusion of the witness.

The COURT.—It seems to me that it's outside of the case.

Mr. WARREN.—I wish merely to make myself very clear on the record on this point.

The COURT.—It's decidedly leading question, Mr. Warren. It's objected to as leading. [291]

Mr. RUSSELL.—Yes, I include that as one of my objections.

Mr. WARREN.—The purpose of these questions, your Honor, is manifestly to show conditions which

(Testimony of Capt. Bruhn.)

existed and the degree of risk which these men took, and the question of whether or not it was difficult to get men to go under the conditions which existed is certainly material on the question of the danger to the men who went.

The COURT.—It's too uncertain; the testimony is too uncertain to lead the Court to a conclusion.

Mr. WARREN.—When you asked the crew or ordered the crew to go in that boat, did they go immediately? A. Yes.

Q. What preparation, if any, was made with regard to handling that boat?

A. There was a surf-line attached to the boat.

Q. Why was that attached to the boat?

A. On account of wind and weather and sea.

Q. Did that surf-line have anything to do with whether or not that crew went?

Mr. RUSSELL.—That is objected to as immaterial and irrelevant.

The COURT.—Why did you have the surf-line?

A. The surf-line? On account of the wind and weather.

Q. You considered it made things easier?

A. No, because I considered that the way the second mate said they won't go without a surf-line, they couldn't get back to the ship. Therefore, they were given the surf-line so that we could lead them back.

The COURT.—That's not evidence.

Mr. RUSSELL.—I move that that portion of the captain's testimony in which he refers to what he

(Testimony of Capt. Bruhn.)

was told be stricken.

The COURT.—Motion is allowed.

Q. In your judgment, Captain, did the use of a surf-line as you have described in any way affect the degree of danger to [292] the men in the boat?

A. Yes.

Q. How and why?

A. Because they wouldn't be able after they got near the schooner there and got into that surf, these men wouldn't be able, against this wind and sea, to pull the boat out. That's the reason the surf-line was attached to her so we could hold her and heave her back.

Q. You had previously, when the "Halcyon" was in the position near the creek, sent a boat with a surf-line?

A. The first line? The second boat we had a surf-line.

Q. When was the second time? That is when the mate went to take soundings? A. Take soundings.

Q. Why was it put on then?

A. Sir? I cannot hear.

Q. Did you hear any request from the crew to take that surf-line?

Mr. RUSSELL.—That is objected to.

The COURT.—Sustain the objection.

Q. When the boat was sent with a line to the "Halcyon" at her position close to the beach the last time.

The COURT.—You mean when they took the seven-inch cable?

(Testimony of Capt. Bruhn.)

Q. No, when they took the six-inch line, were there any reasons other than those you have stated why you ordered the surf-line to be used.

Mr. RUSSELL.—That is objected to as immaterial, irrelevant, calling for the conclusion of the witness.

The COURT.—We'll hear the answer.

A. Was this supposed to be the first thing in the morning?

Q. No, this is the time they took the six-inch line. Any reasons other than those you've given why you ordered a surf-line to be used? A. Any reason?

Q. Besides those you have told us about the wind and the [293] weather and *dager*, were there any other reasons that had to do with your order to use the surf-line?

A. Yes, sir, to save the boat and also save the men that was in it in case anything should happen to them; to guard myself against the loss of boat, the boat getting swamped.

Q. Your experience in handling crews of the kind on the "Niihau" has been about how long? How long have you been handling steamers like the "Niihau" in these Islands?

A. In these Islands, between, must be about twenty odd years; about twenty-three years on Inter-Island boats.

Q. Have you on any previous occasions gotten into storms and vessels in distress?

A. Not many vessels, but we have been in a good many storms.

(Testimony of Capt. Bruhn.)

Q. And have you had to do before with sending boat's crews with lines?

A. Yes, sir, very often; very common around a number of the landings. If you went me to name the landings I'll name some very bad landings. Kilauea is one. That's very treacherous. Hanalei has a very nice landing, but in winter-time it is treacherous. There is another one I use surf-lines. There is another one in Kauai, Waimea; a very treacherous landings; we use the surf-line very often. Formerly when we had little boats and no wharf we used to handle the freight off the beach.

Q. Compare this occasion when you wanted to send the boat in there to the assistance of the vessel, compare it with others where you have thought it advisable to attach a surf-line. Will you say there is any difference in the degree of danger? A. Yes.

Q. Any great difference in the degree of danger to the men?

A. That's what I said, danger to the boat and also danger to the men if the surf-line had not been attached to the boat.

Q. Then, in your judgment, would it have been a prudent or seamanlike thing to do to have sent a boat in on this particular [294] occasion with that six-inch line to the "Haleyon" when she was nearest to the beach without a surf-line? A. No, sir.

Q. Would you have thought it a proper and seamanlike thing to do to ask a crew to assume the risk of going in without a surf-line? A. No.

Q. When you got the six-inch line on board that

(Testimony of Capt. Bruhn.)

had been sent in and put on board the "Halcyon" when she was in the neighborhood of position three, or rather, I will ask you, by the time you got the line to her, where was the "Halcyon"?

A. The "Halcyon" was in the direction here, she was dragging astern.

Q. Astern of position No. 3?

A. That's No. 3 here?

Q. Yes.

A. Well, she was dragging and as she was just about in the surf, I wouldn't say that she was ashore then, but the suction under her stern helped her. Then by that time our boat got pretty close up to the "Halcyon"; any man who knows how to throw a heaving-line could have thrown a heaving-line without any trouble.

Q. Go on.

A. But when they were getting ready to throw this line aboard her, the distress signal of the "Halcyon" went up about the same time our heaving-line was aboard of her just after the distress signal got up.

Q. When the "Halcyon" began to move, will you indicate in what direction she began to move.

The COURT.—He didn't say she began to move.

Mr. WARREN.—He said she was moving.

A. She was dragging and then come in and commenced to slue her bow; sluing her bow changed the position this way; changed over towards Hilo.

Q. Will you mark on the map there a line to indicate the way she was pointing when she had gotten

(Testimony of Capt. Bruhn.)

changed, as you say? A. If you want to get her—
[295]

Q. That is, what way was she pointing? Put an arrow for her bow. A. (Witness marks.)

Q. Now, we'll mark that "Halcyon-4." At that time, what direction was her anchor chain leading from her, if you noticed that?

A. Her anchor chains were leading right up to northward in the same direction she dragged.

Q. Will you mark a little mark on that map to indicate the direction of her anchor line at that time?

A. (Witness marks.)

Q. Now, when that line was put on, when your six-inch line got on, what did you do?

A. Waited till they made a sort of a motion on the *sjp* that the line was fast.

Q. How long did that take?

A. Well, I should think that couldn't have been any more than about ten minutes or so.

Q. Then when you *go* a motion that you took to indicate that it was fast, what did you do?

A. Then we heaved away on the line.

Q. How?

A. On the windlass; steam winch forward that we use for our anchors and heaved up and got a strain on it and got both anchor chains on strain then *we* we began to swing the schooner.

The COURT.—With your anchor chains?

A. No, with these lines. Our anchor chains tightened up gradually when they came tight we heaved away slowly on the schooner, watching her as she rises

(Testimony of Capt. Bruhn.)

and falls; whenever our line would slack a little, we'd take in the slack till her bow kind of almost got into the same position as she is here (indicating).

Q. That is, back into line again?

A. Into line; the stern of the ship was right in the breakers.

Q. And when her bow got around approximately into line again, what did you do?

A. Stopped heaving and sent another line to the "Halcyon."

Q. How did you send that one? [296]

A. In the boat.

Q. Any different from the way you sent the six-inch line?

A. The same way we sent the six-inch line; surf-line attached.

Q. Was there any difference in the weather conditions and sea conditions? A. About the same.

Q. What size line was that? A. Seven-inch.

Q. That was made fast on board? A. Yes, sir.

Q. How long was it then before you got to using both lines?

A. When we was fast we tightened the same; heaved in on that line and then made that fast to the bits and then took the other line; got an equal strain on the six-inch line and that was made fast to the bits and then we started to go ahead on her on the main engines and heaving at the same time as the mate is forward there watching the slack on the chain. Whenever she jumps, the windlass will take the slack itself. When these swells would come, especially

(Testimony of Capt. Bruhn.)

these big ones, would hit broadside and wash over the deck and over the deckload here amidships. When these hit here she takes a heavy roll. We kept taking that way for sometime, then after that she commenced to come along gradually. When she got clear of that sand bank there, away from the beach, she was stranded there, we got ready then with her and heaved up our anchors and steamed ahead with her until, well, the schooner was about in line here, almost in a straight line with the Hilo wharf here.

Q. Will you mark on this map, if you can, the place to where you towed the schooner, before you cut her off?

A. It would be about here, in this direction; should be a little more out.

Q. Should be further out from the end of the railway wharf?

A. Should be a little further out. There was almost a straight line. [297]

Mr. WARREN.—We'll mark that "Halcyon-5." Having gotten her there, what was done?

A. Got orders from Captain *Moser* to stop towing.

Q. Captain Mosher was where?

A. He was aboard the "Halcyon."

Q. And then what happened?

A. I dropped my anchors and the schooner about the same time dropped his anchors.

Q. How many anchors did the schooner have?

A. I only saw one.

Q. Then what happened?

A. Then as the schooner was going astern, of

(Testimony of Capt. Bruhn.)

course, we came astern the same time with the wind and weather to help; still had our line attached to the schooner. She still held on to us.

Q. How many lines did you have then?

A. Two, still had the two lines. As we were paying out chain, the schooner came more and more; seemed to us his anchor was still dragging so we lay there; paid out on our anchor chains. Pretty soon Captain Mosher, the harbor-master, and the man in the boat there, introduced to me as the captain of the schooner, I didn't know the man's name; I don't know his name to-day, and he says, "This is the captain of the schooner and he wants you to hold on to her." He said, "He lost one anchor; he's only got one and that is down in the water, down the bottom with all the chain he's got. His anchor chains is no good"; that is the expression.

Q. What else?

A. Then, while he was there I asked the captain, I says, that was previously, before that. I says, "What did you cut my line for." He says, "No, I didn't cut it, but it got foul of a buoy." Of course, it's pretty hard thing to keep lines clear amongs buoys of that kind when there's vessels in a narrow space. It seems there's an old buoy there; has been lying quite awhile; sort of bell buoy, square with iron belts on. Well, it seems that the worms had got into the wood and our lines got caught on it. [298] I guess the bight of the rope must have caught it.

Q. What was the appearance of the parted end of that line?

(Testimony of Capt. Bruhn.)

A. When I heaved the line in and looked at the end of it, it looks the same as if the line had been cut with a blunt instrument, an axe or something.

Q. Up to that time had you *know* why the line had parted?

A. No, not until I spoke to the captain.

Q. That then was the second time? That was a different occasion from the one when you hollered to him?

A. When I hollered to him that's when the line parted; that's the instant it parted. I hollered to them, but if they hollered back from the "Halcyon," I wouldn't have been able to hear them.

Q. How long did the "Niihau" hold on to the "Halcyon" after that?

A. We laid there for a short while. He went back aboard the ship. I told him that all right I'd hold on to him, but to let our lines go for the time being; let one line go first. When he got on board they let the seven-inch line go; we hove that in. When we had that in we told him to let go the six-inch line as I wanted to change my anchorage as I wanted to get into a different position further ahead; so he agreed to that. Well, we hove up our anchor, steamed ahead and got right in line with the schooner to have clearing between the Hilo wharf here and also, where the "Enterprise" was lying out here. And we dropped our anchors, come back, and then run a line over to the "Halcyon." The six-inch line was made fast. We had nine fathoms of chain out, and we set

(Testimony of Capt. Bruhn.)

up a strain on the line to equal with the schooner's anchor chain and held on to him all that day and all that night and the next morning. There was orders the "Niihau" had to go alongside the "Enterprise" for freight for way ports; that is, outside ports from Hilo. A little after seven o'clock I hollered to the schooner then and told her they had to let go our lines as we had to go alongside [299] the "Enterprise" and load freight. There was nothing *side*. He let the line go all right.

Q. At that time, was there any difference in the weather?

A. It was moderated to a great extent.

Mr. RUSSELL.—What's that?

A. It was moderated to a great extent; it commenced to go down during the night after twelve o'clock to the time we let go; during the forenoon while we was alongside the "Enterprise" we was watching the schooner.

Q. Her anchor held after that?

A. Her anchor held after that.

Q. You say you put the "Niihau" in the position of "Niihau No. 2." Was there, in your judgment, any danger involved to the "Niihau" in so doing?

A. No. 2?

Q. When you brought the "Niihau" in and sent the line the first time, early in the morning?

A. Oh, here? Where is the No. 2?

Q. No. 2 is where you were when you first started.

A. There was a good deal of danger here. There is those buoys; the vessel swinging through in a dark

(Testimony of Capt. Bruhn.)

night and you can't locate them; and working around there the propeller might have caught the buoy and it might have thrown the blades off.

Q. If the propeller got involved with a buoy there as to disable it, what, in your judgment, would have happened? A. We would have lost hours.

Q. Your anchors would have held under the conditions there? A. Under ordinary conditions.

Q. Now, would you say that there was any danger to the men in the boat when they came with the line to the "Halcyon" the first time in her first position?

A. Yes.

Q. What degree of danger?

A. Of getting washed up against the ship or getting under her head gear there.

Q. On the occasion when the "Niihau" was sending her six-inch and then her seven-inch line, when the "Halcyon" was close to the beach, [300] what danger was there then to the "Niihau," if any?

A. After sending the six and the seven-inch line to the "Halcyon," there was danger of loss of our boat or might even lose some of our men; might have lost all. That's the danger.

Q. And as to the "Niihau" herself?

A. The danger as to the "Niihau" was the only danger of our winding up those lines in our wheel at that time.

The COURT.—But down there is no line.

A. Mr. Warren is referring down to the "Halcyon" over here.

Q. That is, when the "Niihau" was in the position

(Testimony of Capt. Bruhn.)

No. 3 and the "Halcyon" was in position 4, and your lines? A. Yes, our own lines.

Q. Very much danger?

A. There's a good deal of danger there. Our anchor chain is like a fiddle string. If any part of these lines should get on the wheel there is no living man will go down there to clear them.

Q. Have you *know* that to happen?

A. I have had it; we had different occasions here on our boats that we had lines on the wheel. The "Helene," we had to tow her over to Kapoho. We had a few years back at Honuipu the Iwalani carried away the stern-line the vessel going ahead on it, went right around the wheel. I had an occasion at Kukui-hale. There's a current sweeps up there to northward and she parted the line near the stern buoy and, of course, the vessel going off, the line came fast. When she came in the current swung her towards the landing. Of course, they can't use the engine when she's got one of these lines on the wheel. We asked for volunteers. Some of them tried it. I tried to get it myself; got a part of the line, not on the wheel, but outside the wheel. We had one fellow there, a half Chinaman; he was in the hospital two months.

Q. If a line had gotten foul of the "Niihau's" propeller on this occasion with the wind and sea as you have described them, what [301] can you say as to the danger there would have been on that account with her propellers in that condition?

A. In that condition and the state of the weather on that day we couldn't have used our engines.

(Testimony of Capt. Bruhn.)

Q. And what about your anchors?

A. Our anchors, we might have held on and we might not. If the wind had increased more, we was likely to drag as well as any other vessel because there is vessels dragged there before. I had an occasion here in Hilo—

Mr. WARREN.—Never mind that, Captain. Cross-examine.

Cross-examination.

Mr. RUSSELL.—Q. Captain, in these various instances where you spoke of the line getting in the propeller, were the vessels lost? A. No, sir.

Q. Was the vessel lost in any one of those instances? A. No.

Q. What was the full extent of the damage that resulted? A. On these vessels?

Q. Yes.

A. Well, they lost, one of them, they lost two days of time and had to pay towage for a vessel, for the Kaiulani that was sent for her.

Q. I mean what was the extent of the damage to the vessel? A. To the vessel?

Q. Yes.

A. By getting the line in the propeller?

Q. Yes.

A. The extent to the vessel at that time wasn't anything because she was lying in clear water.

Q. Now, you spoke here in this particular instance if the lines had gotten afoul of the vessel and there was, and if the anchors wouldn't hold here, of course, there

(Testimony of Capt. Bruhn.)

was danger of her going ashore. Well, now, there wouldn't be any likelihood of these lines getting afoul until an effort was made to pull off the [302] tow, the schooner, is that not so?

A. Was this alluding to the "Halcyon"?

Q. This is alluding to the "Halcyon." You were anchored there at the time you sent the line to the "Halcyon"? A. Is that the "Niihau"? Yes.

Q. You had demonstrated to your own satisfaction that you could hold her there?

A. She could hold her for the time being.

Q. The weather was pretty heavy? A. Yes.

Q. And then when you got behind of this "Halcyon," you were at the same time pulling on her anchor chains?

A. Yes, but where are you at now, at the first position?

Q. Yes.

A. When I was pulling on the "Halcyon," we were pulling on our anchors at the same time.

Q. Yes. A. Yes.

Q. So that that absolutely demonstrated that her anchors were holding all right?

A. Were holding *the*?

Q. Were holding the "Niihau"?

A. Her anchors were holding her at that time.

Q. Now, if that time the tow-line got foul of the vessel, you had had it—

Mr. WARREN.—The propeller.

Q. Yes, the propeller. You had had it already

(Testimony of Capt. Bruhn.)

demonstrated that her anchors would hold her?

A. Holding, yes, holding for the time being.

Q. Now, when you sent. Now, when you sent those men—I think it was Thompson and the other fellow—to make soundings, was that before you had started the tow, the very first time?

A. No, it was after we had the lines fast to the “Halcyon.”

Q. So that, when you sent the first line to the “Halcyon” that morning, she had not touched?

[303]

A. Who, the “Halcyon”?

Q. Yes.

A. I presume that she must have touched the way she was lying.

Q. The first time?

A. In the morning there, yes, I presume she must have touched; of course, I wasn't aboard the ship; I couldn't say, but according to the locality that she was in and the weather, surely she must have touched. My opinion is that she was touching all right.

Q. There was reported to you the fact that at her stern the depth was two and a half fathoms, was there not? A. Yes.

Q. And she wouldn't touch in two and one-half fathoms of water, would she?

A. Yes, sir; what *were* the vessel drawing.

Q. Are you aware what the vessel was drawing at that time? Do you know?

A. You asked me if I thought that she was touching and I said, yes.

(Testimony of Capt. Bruhn.)

Q. Do you know how much water she was drawing?

A. No, I don't know exactly but I could come pretty close to it.

Q. If you don't know how much she was drawing—

A. There's no man living that can judge what a vessel is drawing when a vessel is moving up and down in the water.

Q. Why did you send around there to make soundings?

A. In order to find if there was any obstruction before I commenced to tow.

Q. What difference would that make?

A. There might have been a rock.

Q. When it was reported to you that she was at her stern, two and a half, in two and a half fathoms of water you concluded that she was not floating?

A. I concluded she was touching right along; the "Halcyon," where she was on the beach. [304]

Q. And you started to tow her with a six-inch line believing she was touching? A. Sir?

Q. You started to tow her with a six-inch line believing she was touching?

A. No; I said I believe she was touching when she was lying there and when we had our six-inch line attached to the "Halcyon." We hove on that line and brought her up gradually.

Mr. WARREN.—He's talking about the second time.

A. No, I'm talking about the first time. Then when we went ahead with her, got it all taut and

(Testimony of Capt. Bruhn.)

started up with her, hove in on our anchor chains the same as I explained to you.

Q. That's a rocky bottom there?

A. It's part of it, on this side nearest in, it's rocky.

Q. If she was touching she would be touching on rock? A. Well, if she was far enough in.

Q. When you started to tow her you don't think she was touching?

A. When I took that line from her, the way she looked to me, I thought she was a total loss and that there was no hopes at all even of saving her.

Q. You thought she was ashore; you thought she was on the rocks? I'm asking you when you started to tow her with that six-inch line, you didn't think she was on the rocks?

A. Not on the rocks but I think she touched. She was touching there as I saw the sea raising her up and down.

Q. Now, could you see the vessel?

A. I could see the object.

Q. It isn't true then that it was so dark that you couldn't see fifteen or twenty feet away?

A. I never mentioned anything that I couldn't see fifteen or twenty feet away.

Q. I know you didn't but I say, if any such claim—

A. Those questions has never been asked, but I say, I saw the object of that schooner. [305]

Q. So you could see an object fifteen or twenty feet away?

A. I could see an object further; I got pretty good sight.

(Testimony of Capt. Bruhn.)

Q. When you anchored the first time when you sent that line to the "Halcyon," you were about on a line with the end of the railroad wharf, is that right?

A. About in line with the end of the railroad wharf; that's where our anchors was lying, but the vessel itself was further in.

Q. About how far in?

A. About close up to the second buoy?

Q. If your anchors were about in line with the railroad wharf and you had ninety fathoms then your vessel must have been a little less than ninety fathoms from the anchors, is that right? A. Yes.

Q. How much of a line did you have to the "Halcyon" when *when* you first started?

A. Oh, after the lines were fast?

Q. Yes, after the lines were fast.

A. I should judge about sixty or sixty-five fathoms between the two ships.

Q. Now, estimate then from that how far the "Halcyon" was from the end of the railroad wharf.

Mr. WARREN.—Inner end?

A. Well, when this line was fast to the "Halcyon" we hove in the slack; after these lines were set up there was between sixty and sixty-five fathoms of line.

Q. How long is that railroad wharf, do you know?

A. That railroad wharf must be in the neighborhood of eight hundred feet; very little less, may be more, but I think it's in the neighborhood of eight hundred feet.

(Testimony of Capt. Bruhn.)

Mr. WARREN.—May I, at this time, *over* this sketch in evidence.

(Received in evidence and marked Libellant's Ex. "B.")

Q. Where were you, captain, before you took the position [306] "Niihau-2"?

A. We was out here; out in the bay here; anchored outside here.

Q. And are there any lights on this wharf?

A. No, there's not lights there except once in a while there may be a light shining through a little window; there's lights inside, but sometimes they burn and sometimes they don't.

Q. Now, if you saw the "Halcyon" that night, you could, of course, see the wharf?

A. Oh, when I got in there I saw the wharf.

Q. So that when you sterred in here your vessel was in no danger was it?

A. No. Of course there was—

Q. No danger of striking?

A. No danger of striking, but getting tangled up with the buoys.

Q. And if you could see the wharf, you certainly had steerage on the vessel?

A. When we got that far where we dropped our anchors there is no steerage on the vessel because the vessel was going in, we were depending on our anchors.

Q. There was the same danger of your getting tangled up with the buoys as your running into the wharf?

(Testimony of Capt. Bruhn.)

A. No; the wharf is a large object and can be seen. When the sea is running, the buoy is a hard thing to see; at night, when it's lying low out of the water and the seas are continually washing over it; and unless you could see that buoy you wouldn't know how to avoid running into it.

Q. What difference does it make whether that buoy could be seen or not if you could see the wharf and you knew that buoy was there?

A. I seen the wharf, and not knowing where the buoy is if you make her swing around she would swing on top of that buoy.

Q. It doesn't make any difference if you saw the wharf. A. I saw the wharf.

Q. What difference does it make if you knew that the buoy was there if *you that* buoy was there, what difference does it make?

Mr. WARREN.—I object to counsel's manner toward the witness. [307]

The COURT.—Overrule the objection.

Q. I'm asking you what difference it makes whether you could see that wharf or not as far as the danger compared with danger to the "Niibau" of running into the wharf?

A. The object that I have right in sight and this here is an object that I can't see at night.

Q. Well then, if you can avoid running into the wharf because you can see it and if that's your reason for being able to avoid running into the wharf, you could equally avoid running into the buoy if you

(Testimony of Capt. Bruhn.)

knew where she was?

A. I said the danger is of the vessel swinging and going into the buoy; I am not talking about running into the buoy.

The COURT.—Captain, I think that he is trying to get this kind of a question, you being acquainted with the water there and the position of the buoy, the mere fact that you can see the wharf and know the distance between the wharf and the buoy, you could easily avoid it without seeing it?

A. It's pretty difficult to handle a ship a short distance. It is a pretty short distance between the wharf and that buoy.

Q. At the same time, though there is that risk, the fact that you know the distance of the buoy from the wharf is some aid to you? A. Some aid.

Q. Now, you say there was danger in sending that boat to the "Halcyon"; that first boat. Well, if you thought there was danger at the time, why didn't you send a surf-line with it?

A. What is that Mr. Russell?

Q. You testified that there was danger to that first boat that went over with a line to the "Halcyon" that morning, didn't you?

A. I said that there was danger to the boats and we sent the six-inch line over to the "Halcyon."

Q. And you sent that on without any surf-line?

A. We sent that on without any surf-line.

Q. With the second boat that went you did send a surf-line? [308]

(Testimony of Capt. Bruhn.)

A. Because the men refused to go.

Mr. RUSSELL.—I move that be stricken out as not responsive.

Mr. WARREN.—I object to that motion to strike.

The COURT.—I think it has to be stricken out.

Q. Will you answer that yes, or no, please?

A. Will you please let me know—

Q. The second time that the boat went out, you did send a surf-line, didn't you?

A. The second time.

Q. Yes. A. That was in the early morning?

Q. Yes.

A. I sent the surf-line; we have no ship lines.

Q. Now, when the tow-line parted, you say the "Halcyon" was at No. 2, the "Niihau" at No. 2, is that right? A. Yes, that's right.

Q. *Are there* is the buoy that you have reference to somewhere off here?

A. No, the buoy is right here.

Q. It appears there are two "Niihaus" No. 2?

A. Yes.

Q. Now, this "Niihau" No. 2 should be changed to No. 3, and No. 3 to No. 4. We will change No. 2 to No. 3, and No. 3 to No. 4.

Q. I have reference now to No. 3. Referring to—

Mr. WARREN.—To No. 3 as now marked on the map?

Mr. RUSSELL.—Yes. Now, if the tow-line parted as the result of coming in contact with the buoy, the positions here must be absolutely wrong?

A. No. We was coming out here with the "Hal-

(Testimony of Capt. Bruhn.)

cyon," coming along here, you see; coming through here. The "Halcyon" comes this way.

Mr. WARREN.—Indicating between position No. 1 and 2.

A. As we come along we arrived off here and here is the end of the railroad wharf and that's a quite short turn to make; you can't cut a corner there; of course, the "Halcyon" come along here and she kept coming in on this side; most likely the slack of our line got caught on that buoy. The "Niihau" pulled off on this [309] side, the "Halcyon" on this side; naturally something had to give.

Q. Which buoy? A. This buoy.

Q. This one? A. No, that's No. 3 buoy. We took the buoys from inshore out; made this here No. 3.

Q. No, Captain, if your steamer, *you* vessel got up here, No. 3, and the hawser was caught around buoy No. 3 here, what force would pull the "Halcyon" to the position here marked No. 2?

A. What little headway she had.

Q. That's just your conclusion, she must have been caught? A. I think she was caught.

Q. You don't know anything about it?

A. Which, that the line was caught on the buoy?

Q. Yes. A. No.

Q. I call your attention to this map.

Mr. WARREN.—Libellee's Exhibit No. 1.

Mr. RUSSELL.—Q. You recognize this as the piles? Now your vessel, was of course, inside of these piles between the piles and the wharf?

(Testimony of Capt. Bruhn.)

Mr. WARREN.—Your vessel?

Mr. RUSSELL.—Q. The "Halcyon"?

A. Around in this direction; here somewhere.

Q. Well, can you, will you indicate where you believe the "Halcyon" was at the time you first—

A. When we were here?

Q. Yes.

A. The "Halcyon" was about off here; off here, like that, somewhere; of course, I was quite a distance off. The way I took it to be, she was right across the mouth of the river here.

Q. But here you have—

Mr. WARREN.—Here referring to Libellee's Exhibit 2.

A. Here's the piles here and we was there, about along right here; that is, right between the wharf and the piles. [310]

Q. Just indicate where the piles are.

A. Yes. Now, the "Halcyon" was about along here, and there is the old Hackfeld wharf, and the "Halcyon" is in here, in that direction.

Q. Will you indicate where those buoys are.

A. This is in the dark; I didn't take no dimensions; that's in my judgment when she was about there, the "Halcyon."

Mr. WARREN.—Will you put your initials by that mark?

The COURT.—Run a line out.

Mr. RUSSELL.—Marks W. C. B.

Q. Now, Captain, did you believe then that as you were anchored out here at the end of the railroad

(Testimony of Capt. Bruhn.)

wharf with sixty or seventy fathoms of line between you and the "Halcyon" that you were able to reach the "Halcyon"?

A. Yes. I'm saying after the line was hove taut. We had more line previously.

Wednesday, August 18, 1915.

Mr. RUSSELL.—May we stipulate at this time that all the testimony taken *de bene esse* shall form part of the trial of this case, with all the exceptions.

Mr. WARREN.—With the exceptions, yes.

Mr. RUSSELL.—Now, Captain, will you please indicate upon this map (Libellee's Ex. 2), the position of the "Halcyon" at the time the tow parted, the line parted.

Mr. WARREN.—If there are other marks on that, let's use a blue pencil.

Mr. RUSSELL.—Yes.

A. The position of the "Halcyon"?

Q. At the time the tow-line parted.

A. At the time the tow-line parted. (Witness marks on Ex. 2, which mark is made H-1.)

Q. Then your position at the time, the same time?

A. (Witness marks on Exhibit.)

Q. And that's N-1. Now, after you were engaged in the towing, at the time that the tow-line parted, you were engaged in towing, [311] were you?

A. We were.

Q. Pulling? A. Pulling.

Q. How far had you intended to take her out?

A. At that time?

Q. Yes.

(Testimony of Capt. Bruhn.)

A. To a safe anchorage out in the bay there.

Q. Did you have any definite point in view, in mind, at the time?

A. I had in mind to get her up to one of the buoys; anchor her off there somewhere.

Q. And that would be about where, if you will please indicate it on the map?

A. That would have been out here somewhere; up in this direction here.

Q. Just make a cross there.

A. (Witness makes a cross.)

Q. And it was the fact that you had intended taking her out here that prompted you to shout out to the "Halcyon" when the tow-line parted?

A. When our line parted, why, I sung out to him, but I lost control of her then.

Q. But it was because you had intended taking her out here?

A. Yes, out in a safe distance out in the bay; that was my intention.

Q. Now, you said that after a while you saw her dragging; that was about between fifteen and twenty minutes, was it? A. Something like that.

Q. And where were you at the time that you saw her dragging?

A. We was lying in the same position here where we were anchored.

Q. Hadn't changed your position a little bit?

A. A very little; it might have been a little one way or the other, the ship swinging.

Q. And you remained there in order to stay by her?

(Testimony of Capt. Bruhn.)

A. Yes, to render assistance.

Q. About what time was it when the tow-line parted?

A. Well, that was somewhere around six, and a little after six. [312]

Q. What time was it when she went ashore, the "Halcyon" went ashore?

A. She went ashore, that was somewhere around eight o'clock; that is when she drifted over here.

Mr. WARREN.—Drifted over where?

A. From the railroad wharf towards the beach.

Q. You mean the place where she dropped anchor?

A. After our line parted.

Q. Did you observe at the time that the "Halcyon" had but one anchor?

A. I noticed it then that she had but one anchor.

Q. And that was one of the considerations that suggested the feasibility of staying by her?

A. That as well as the wind and water.

Q. That as well as the wind and water?

A. Yes, that as well as the wind and water; of course, I didn't know how much chain he had or the condition his anchor was in; if it was a heavy anchor or light anchor; that I didn't know.

Q. Then, will you indicate by a line the course she took in going toward the beach.

Mr. WARREN.—The "Halcyon"?

Mr. RUSSELL.—The "Halcyon."

A. The "Halcyon? Just dotted?

Q. Yes, a dotted line.

A. (Witness makes a dotted line.)

(Testimony of Capt. Bruhn.)

Q. After you saw her again dragging, what did you do?

A. We immediately got our hawser right in the boat.

Q. Will you indicate as near as you can the position of the "Halcyon" at the time that you began to move toward her?

A. Well, when we began to move to her that's where she started in here; we commenced to get ready then and tried to follow her up as soon as we could.

Mr. WARREN.—Here means what, H-1?

Mr. RUSSELL.—Yes. Do you mean that you kept following her all the time?

A. As soon as we got our anchors up; we had to get our anchors up and our lines ready; when she got drifting along here, we followed her right up. [313]

Q. And did you heave up your anchors and begin getting your lines ready when you first noticed her dragging?

A. As soon as we noticed her dragging we were getting our lines ready.

Q. How long does it take for you to heave up your anchors and get your lines ready?

A. By the time we got the lines coiled in the boat, heaved up anchors, and to get down here, around twenty-five minutes; in the neighborhood of that.

Q. At the time that the "Halcyon" was as near to the beach as she ever got, will you indicate the position of the "Niihau"? A. (Witness indicates.)

(Testimony of Capt. Bruhn.)

The COURT.—You mean the “Niihau” after she followed her up?

A. Yes, after she followed her up.

Mr. RUSSELL.—Marked N-2. You recognize the fact; Captain, that she, that the “Halcyon,” from the time she began to drag from the position “Halcyon”—1, H-1, that she was in danger of going on the beach? A. The way she was drifting.

Q. Why did you wait until she got as near to the beach as she ever did before you sent her a line?

A. I didn't wait until—

Mr. WARREN.—Object to that, because the witness has not in any way indicated how near the “Halcyon” was to the beach when he made his move.

The COURT.—As I understand, this means when she got to the nearest point to the beach that she reached?

Mr. RUSSELL.—Yes.

The COURT.—I don't see any objection to that.

Mr. WARREN.—The witness's testimony has not been—

Mr. RUSSELL.—I'll withdraw the question.

Q. Captain, you testified that you sent the “Halcyon” a line, the second time, about eight o'clock; is that right? [314]

A. Yes, sir, around eight o'clock.

Q. You also testified that the tow-line parted along at about six o'clock?

A. Little after six I testified.

Q. You also testified that she began, that you noticed her begin dragging her anchor and drifting to-

(Testimony of Capt. Bruhn.)

ward the beach about fifteen or twenty minutes after the tow-line parted; is that right? A. Yes.

Q. What were you doing in the meantime from the time that you saw her dragging until she got on the beach, until she got as close to the beach as she ever got; that's an hour and three-quarters?

A. We was preparing.

Mr. WARREN.—I think the same objection lies to that because there is no testimony that he waited until she got as near to the beach as she ever got.

(Question read.)

The COURT.—I don't see any objection to that.

Mr. RUSSELL.—Q. What were you doing in that hour and three-quarters?

A. We were preparing.

Mr. WARREN.—Now, I object to that, "What were you doing in that hour and three-quarters?" There is no testimony—

Mr. RUSSELL.—Withdraw the question.

Q. What were you doing during the time from the time that you first observed the "Halcyon" commence dragging and the time that she got as near to the beach as she ever got?

A. When the "Halcyon," when she was dragging, she was dragging along slowly, which I explained to you before, with sea and wind, and when I found out, when I saw that she didn't take a hold of her anchor, I immediately got everything ready and followed her up to render assistance.

Q. You say you were preparing. What did you do in the line of preparing?

(Testimony of Capt. Bruhn.)

A. Getting everything ready.

Q. What was that?

A. That was in the case of lines, [315] coiled in our boat.

Q. And how long a time did that take?

A. Well, that doesn't take so very long; took the time I got everything ready to stand by and move the ship slow.

Q. How long a time in point of minutes did it take for you to heave your anchors, prepare your lines, and get your boat in readiness?

A. In readiness? About something like about a half an hour; every bit of that.

Q. Will you please indicate on the map the position of the "Niihau" when you first sent a boat with a line to the "Halcyon"?

A. When we first sent it?

Q. When you first sent the boat with a line at the time after she began dragging toward the beach.

The COURT.—You mean on the first occasion?

Mr. RUSSELL.—No, on the second occasion.

A. I have indicated here; you marked it here, there's the "Niihau."

Q. So you were at N-2 at the time that you first sent a boat with a line?

A. I was at N-2, the position that the "Niihau" is in here indicated; that's the time when we sent a line to the "Halcyon" while she was dragging in towards the beach; that wasn't the first time, that was the last time.

The COURT.—The first of these two lines?

(Testimony of Capt. Bruhn.)

A. Yes, the "Niihau," the "Halcyon" hasn't shown up yet.

Q. You sent two lines in that place?

A. I'm saying this is the position we moved into over here; we paid out our chain and let her come down and that's the time that we sent the line to the "Halcyon" when she was going towards the beach.

Q. The six-inch line? A. The six-inch line.

Q. Now, how long a time elapsed from the time you left the position [316] N-1 until you got to the position N-2?

A. How long a time up to the present time here now?

Q. How long a time did it take from the time that you left your position at N-1 until you arrived at your position at N-2?

A. To steam down there and redrop the anchors, that didn't take long. I never marked the minutes down, the exact minutes. In that space of time we was preparing and moving right along; when we arrived in this position here, we was continually working around and watching the "Halcyon," trying to follow her up. I didn't mark down every little thing.

Q. From the time you left N-1 until you arrived at N-2, until you dropped anchor at N-2, how long?

A. That was somewhere around twenty-five minutes.

Q. Did you send her a line, did you send the "Halcyon" a line immediately upon your arriving at the position N-2?

(Testimony of Capt. Bruhn.)

A. We started right after the "Halcyon," yes; got the boat crew and everything else.

Q. How long after you got your boat crew ready and everything was it before you sent her to the "Halcyon"?

A. The boat's crew was in, but it refused to go there.

Q. How long did they stay before they went?

A. They stayed for the time until we got the surf-line.

Q. I asked how long they stayed, and I ask that be stricken.

Mr. WARREN.—I object to it's being stricken.

The COURT.—He merely wants to know how many minutes.

Mr. RUSSELL.—How long a time elapsed from the time that the boat's crew were in the boat until the boat started with the line?

A. Well, that was a few minutes; it might have been between five and ten minutes, to get the surf-line.

Q. Captain, you say that about fifteen or twenty minutes after the tow-line parted you saw the "Halcyon" begin dragging her anchor. Let us assume that it was twenty minutes. You say [317] that you took from twenty minutes to twenty-five minutes more to proceed from N-1 to N-2. Is that right?

A. That's the time we got there; it didn't take us that time to get that far; that's maneuvering and everything included, going ahead.

(Testimony of Capt. Bruhn.)

Q. So that would be say forty-five minutes. Now, it was somewhere in the neighborhood of about two hours from the time that the tow-line parted until the "Halcyon" reached the beach. How do you account for the balance of that time?

A. Well, the "Halcyon" was dragging in slowly; she was dragging during that time.

Q. Yes, but what were you doing?

A. We was, I explained that before; I was watching her.

Q. So that while—you said that you sent her a line say about ten minutes or so after you anchored at N-2?

A. I didn't say that; I said we got our line ready.

Q. How long did you remain at N-2 before the line started off to the "Halcyon"?

A. So soon as everything was ready.

Q. I'm asking you how long in point of time?

A. When we sent the line to the "Halcyon," that was about between eight and half-past eight.

Q. Now, Captain, I'm not quite clear. You sent the "Halcyon" a line from N, your position at N-2, between eight and half-past eight. Is that right?

A. Thereabouts.

Q. You say the tow-line parted between six and half-past six?

A. The tow-line parted a little after six.

Q. So that two hours elapsed from the time the tow-line parted until she, until you sent her a line from N-2?

A. She was lying to an anchor there; there was

(Testimony of Capt. Bruhn.)

no necessity of sending a line until she commenced to drag.

Q. Then she was lying at anchor at what place?

A. She had put her anchor down. [318]

Q. Wasn't she dragging at that time?

A. Not right off.

Q. How long a time did she remain without dragging?

A. I said that before; in the neighborhood of fifteen minutes before I noticed particularly that she was dragging.

Q. That was in the position H-1?

A. She was never there; that's the "Niihau."

Q. I say the position H-1.

A. But you were pointing at the "Niihau."

Q. Now, I say at H-1, that's the only time she remained before you notice her dragging?

A. When she dropped her anchor we watched her until she commenced to drag.

Q. Now, Captain, here's what I am trying to make clear to the Court, and that is what you were doing, what the "Niihau" was doing during the time that intervened from the time that she began dragging or that the tow-line parted, until she went on the beach as near as she ever got?

A. The "Niihau" was lying to anchor.

Q. No, two hours elapsed, is that not so, Captain, from the time that her tow-line parted until she went on the beach; we will assume that she went on the beach. Two hours elapsed?

A. I don't think it was quite two hours.

(Testimony of Capt. Bruhn.)

Q. Well, any way, you said that you sent her a line from your vessel at N-2, between eight and half-past eight.

A. Somewhere in that neighborhood.

Q. You say that the tow-line parted little after six? A. Little after, yes, sir.

Q. That makes at least two hours, does it not?

A. Yes.

Q. What I'm trying to have the Court informed is as to what you were doing at that time. You waited fifteen or twenty minutes before you noticed her drag? A. Yes. [319]

Q. That accounts for say twenty minutes of the two hours it took you to proceed from N-1 to N-2; that is, the time that you consumed going—slowing in, twenty minutes; that is forty minutes, is that right?

A. That's right.

Q. Then, after you arrived at N-2 and sent a line on this boat to the "Halcyon," you say was about ten minutes.

A. That's when the boat's crew started.

Q. Yes. That only makes fifty minutes.

A. Well, the line has to be fast, the line ain't fast yet when the line is sent.

Q. What line, the line to the "Halcyon"?

A. To the "Halcyon."

Q. You said it took, in substance, you said it took two hours to go from the time that the tow-line parted until you sent a line to the "Halcyon."

A. While she was in a safe condition.

Q. Yes, but that was only about fifteen or twenty

(Testimony of Capt. Bruhn.)

minutes that she was in a safe position.

A. That is a long distance; she's a long ways from the beach here.

Q. What were you doing at that time?

A. I was lying to an anchor and watching the "Halcyon." They were moving over here; when she was going in we followed her up.

Q. In point of time how long were you lying to an anchor?

The COURT.—It was twenty minutes before you saw her begin to drag?

A. About in the neighborhood of that.

Q. And then, after that, how long did you lay at anchor before you took up your anchor?

A. Almost, I couldn't give the exact time; we started, then went to get our lines ready.

Q. As soon as you saw her dragging?

A. As soon as we saw. After that she was a-dragging slowly; then we hove up our anchors and went in here and dropped both anchors and then getting the boat crew and everything ready to run these lines.

Mr. RUSSELL.—Q. Captain, when you said that from the time you were in the position N-1 to position N-2, it took you as long as twenty [320] minutes. You take into consideration the time it took you to heave up your anchor? A. Everything.

Q. So that from the time you first saw the "Halcyon" dragging until you got to N-2, was about twenty minutes, is that right? A. It might have been.

Q. Well, so that, we have it here, Captain, that from the time the tow-line parted until you arrived

(Testimony of Capt. Bruhn.)

at the position N-2 was about forty minutes. Is that right?

A. Somewhere, which I said before, somewhere around seven o'clock.

Q. And then you sent a line, then, after you arrived at the position N-2 in about ten minutes or so, there was a line on its way to the "Halcyon," is that right?

A. Everything was ready and the line was ready.

Q. Now, can you explain where the balance of that time was consumed?

A. The balance is to get the line over there and to get the line aboard the ship, on board the "Halcyon" and get that line fast; and the next is to get our line set right. We have to take in line and get ours fast and everything.

Q. What time did you begin towing, begin to *to*?

A. Well, when we started to pull on her after all the lines and everything was aboard of her, I think that was in the neighborhood of half-past eight, I think, when the lines and everything was fast.

Q. How long a time did it take from the time you sent the line to the time that you started pulling?

A. That was from around eight o'clock and half-past eight.

Q. About half an hour?

A. A little more or a little less; of course, I can't give the exact minutes. It was about half-past eight when we started to pull.

The COURT.—Counsel wants to find out in this hour and three-quarters from the time the line parted

(Testimony of Capt. Bruhn.)

and the "Halcyon" dragged anchor up to the time she drifted on to the beach, as I understand, is between an hour and three-quarters and two hours. He wants to know [321] how you occupied that hour and three-quarters; he wants you to cover the whole of that hour and three-quarters and tell him what you were doing.

Mr. RUSSELL.—May I remind the Court the time is longer—from six or half-past six to half-past eight.

Mr. WARREN.—May I also remind the Court and counsel that the witness is taking into consideration the time he not merely sent the line, but got it aboard and got it taut up to the time they began heaving.

The COURT.—Let's get that straight from the witness. He wants to make you account for this time; he wants to show that you stood still for a while, and it's very important that you should know what you are talking about; whether you are taking from the time of the "Halcyon" dragging her anchor and the line parted, up to the time she had drifted ashore and stopped; or whether these two hours covered when her line parted up to the time you got the line aboard.

A. In this position here, your Honor, we was working on the "Halcyon" all the time.

Mr. WARREN.—N-2?

A. That's where we were working. After we had the first line, in my opinion, the vessel wasn't quite ashore then. She was coming in here. She commenced to go broadside, which I explained before,

(Testimony of Capt. Bruhn.)

when she got in here, near the beach, the suction under her stern and also the back action from the beach.

The COURT.—Then the two hours, was that the time, two hours to the time you got your line aboard?

A. That's included; all those times here, from the time we anchored here, the time we was working on the "Halcyon"; got the line over to the "Halcyon," hove on this line; and the boats had to come back and get that second line and make that fast.

Q. That two hours, was that the time that you got the line aboard, the first line? There were two lines after her line parted and she dragged anchor?

A. Yes; it was taken up here a little [322] after six, which I say; and up to the time that she drifted up on the beach, we was maneuvering the ship.

Q. What time did she drift on the beach?

A. On the beach there, that was after eight. She never got exactly on the beach.

Q. That was two hours, then, from the time the line parted up to the time she grounded?

A. About that.

Q. Now, he wants to know what you were doing those whole two hours.

A. Those two hours we got our lines on, getting the boat close, getting the line coiled in the boat. Now, there's a whole coil of rope coiled in the boat. That takes a little time to coil it because the line is stiff. Then the boat is taking up time getting the surf-line on. That took up time. Then pulling over towards the ship and getting this line aboard and for

(Testimony of Capt. Bruhn.)

the crew of the "Halcyon" to haul that line up.

Q. The two hours were up when she grounded?

A. She wasn't aground when we passed the line up.

Q. Her stern?

A. Her stern was kind of going into the surf.

Q. Then?

A. Then, when this first line was aboard, the boat came immediately and the second line was passed aboard and then those two lines were made fast and an equal strain. They were pulled taut. Well, on the first one we held the ship in a position, then when those two lines were fast we gradually commenced to heave up on our anchors and going ahead on the main engines. She was following us gradually.

Q. You were watching her after the line parted for twenty minutes or so; you say she was dragging?

A. Dragging.

Q. Now, from that time to the time she apparently stopped from getting her stern on the beach, it would be about an hour and forty minutes? What were you doing all that time. That is, I [323] understand you were coiling; you had to get out the new line because the old one had parted, and were coiling it in the boat and fastening a smaller line to it; and then you had to get up two anchors?

A. Not the last time.

Q. One anchor?

A. Now, we had one anchor down. We was lying here in this position, when we sent those lines to the "Halcyon." The only thing that we done was to heave the vessel and bring—

(Testimony of Capt. Bruhn.)

Q. What did you do, simply pay out chain?

A. We dropped anchors here and paid out chain.

Q. You didn't have to raise your anchors?

A. We didn't have to raise our anchors.

The COURT.—He said he raised his anchors from one to two.

A. She was placed here; that's after the line parted. But we're here now, where we're sending the lines now as the vessel is dragging in.

Q. At N-1 you had to raise your anchors, two anchors? A. Two anchors.

Q. How long did that take?

A. To raise those two anchors, heave up and get down there? That's somewhere in the neighborhood of twenty-five minutes; might have been a little more or a little less, and moving over here, following the schooner when she is drifting and re-anchoring here again; that's the second time; included in all this here, that's from litle after six up to eight.

Q. Did you have a big enough crew to get your lines out and get them ready while you were taking up your anchors?

A. They got our line ready on deck, but we couldn't very well have the boat aft if the propellers were moving or the boat would be very apt to get smashed up against the ship's side.

Q. You had to do one thing at a time?

A. We had to do one thing at a time; when as the anchors went [324] down and the ship came up to the wind we were working in the boat.

(Testimony of Capt. Bruhn.)

Mr. RUSSELL.—Q. Captain, you say that the tow-line parted a little after six; now, how much after six to the best of your recollection?

Mr. WARREN.—I object to that as asked and answered.

The COURT.—No, he says a little after six.

Mr. RUSSELL.—What was the answer, Mr. Warren.

Mr. WARREN.—A little after six.

A. It might have been between six somewhere around quarter past six; might have been a little after or little before. I know it was after six.

Q. Now, to your best recollection, Captain, what time was it when you sent the boat's crew with a line, the six-inch line to the "Halcyon"? What time was it at that time?

Mr. WARREN.—May I ask if counsel will make that clear, the time the boat left?

Mr. RUSSELL.—Yes, the time the boat left your ship with the six-inch line?

A. The time that we consumed?

Q. No, what time was it at that period, at that point?

A. That was around eight o'clock. A little after.

Q. You'd say a quarter after?

A. I didn't have time to look at the watch then because my mind was occupied.

Q. Would you say it might have been a quarter after eight?

A. I couldn't give the exact time, but it was in the

(Testimony of Capt. Bruhn.)

neighborhood around eight o'clock; little before or little after.

Q. Now, you say that when the six-inch line was made fast to the "Halcyon," she was not aground?

A. She was dragging towards the beach, I said, when the six-inch line, when they were near the "Halcyon," the "Halcyon" was then getting near where the large surf comes up; her stern.

Q. Now, at the time the six-inch line was made fast to the "Halcyon" and made taut, she was not aground? [325]

A. She had her stern in the surf after the line was made fast to the "Halcyon" and then her bow commenced to swing towards the Hilo side.

Q. After you had the six-inch line made fast?

A. They got aboard of her, then when they made the motion, we hove aboard the "Niihau." Then the "Niihau" was in a position that she commenced getting broadside towards the beach.

Q. Then you pulled on the six-inch line?

A. Then we pulled on the six-inch line; held our anchor chains and when it straightened, got an equal strain then we held her on safe there; then the boat came back and got the other line in there and got that fast to the "Halcyon."

Q. At that time that you got the seven-inch line to the "Halcyon," was the "Halcyon" free of the ground?

A. She was lying in a position of her stern here in the surf and her bow, naturally, as these big seas kept moving her in.

(Testimony of Capt. Bruhn.)

The COURT.—When you got the seven-inch line on board?

A. That's what I'm trying to explain to Mr. Russell; she was lying in the same position and we hauled with the six-inch.

Q. I got the impression that you pulled her bows out with the six-inch line?

A. We hove the six-inch line on board the "Niihau" and got our anchor chains and our line with an equal strain in a position to hold the schooner, then we run the second line.

Q. But you didn't pull her bows around with the six-inch line?

A. To a certain extent; naturally when this line is fast and her anchors coming and our line pulling her, we naturally moved her.

Mr. RUSSELL.—Q. Going back to the time that the tow-line parted. Did you notice the line as it was heaved in? A. Yes.

Q. Did you see it while it was being heaved in?

A. I saw it afterwards, after it was in. [326]

Q. Did you observe at that time that a big portion of it was gone? A. Not a very big portion.

Q. Thirty fathoms? A. No, not a big portion.

Q. Thirty fathoms? A. No.

Q. How many?

A. I observed when we had our line heaved in and the balance of the line that I saw—

Q. Now— A. You want to know—

Q. What the condition of the line was.

A. You want to know how I know?

(Testimony of Capt. Bruhn.)

Q. I want to know how many fathoms were gone?

A. That was cut off that line?

Q. Yes.

A. That was somewhere around fifteen fathoms; might have been a little less, I didn't measure it.

Q. You didn't measure it?

A. No, I did not measure it; but made a rough guess about that.

Q. Mr. Thompson went over to get the line from the "Halcyon," did he?

A. The piece that was left?

Q. Yes.

A. I know there was a boat's crew sent over there to get the piece of line that was aboard the "Halcyon."

Q. Didn't he ever report to you how much—

Mr. WARREN.—Object to it as hearsay.

Q. He can say yes or no. A. How much line?

Q. How much line there was taken from aboard the "Halcyon."

A. He reported to me that the balance of the line that was left aboard the "Halcyon" or remained there, was aboard.

Q. Did you see that broken line?

A. I saw the broken line.

Q. And you didn't measure it? [327]

A. I didn't measure it.

Q. What did you say that your judgment would be?

A. I said somewhere around twenty fathoms, a little more or less.

(Testimony of Capt. Bruhn.)

Q. You didn't say it was somewhere around fifteen fathoms?

A. I said it was somewhere around twenty fathoms, a little more or less.

Q. Well, at the time the tow-line was being heaved in, did you recognize that there was perhaps twenty fathoms gone?

A. After I saw the line tangled on the schooner?

Q. No. When did you first see the line tangled on the schooner? A. After it parted.

Q. Immediately after it parted?

A. Shortly after it parted I saw the line hanging down over his bow.

Q. When you saw the line hanging over his bow, you knew then that he couldn't have cut it?

A. I didn't know how much was hanging in the water.

Q. Then it was after that that you asked Captain Olson whether he cut the line?

A. When I asked I didn't know that it was Captain Olson; I didn't know the name, the captain of the "Halcyon," the man that Captain Mosher came along there and said that this is the captain of the schooner "Halcyon." And I asked him, I says, "What did you cut our line for," and he says—

Q. And that was after you had seen this line hanging from the—dangling from the "Halcyon"?

A. Oh, yes, the line parted before the captain came over there.

Mr. RUSSELL.—That is all.

(Testimony of Capt. Bruhn.)

Redirect Examination.

Mr. WARREN.—Q. What is the length of the "Niihau"?

A. The length of the "Niihau," according to her measurement is 148 feet two inches.

Q. Now, can you state what the distance is between the railroad wharf and the three buoys? How far are those buoys from the wharf?

A. Those buoys; you mean in a direct line from the wharf? [328]

Q. Yes, each one in a direct line from the wharf.

A. Well, I should say the average would be over two hundred feet.

Q. Over two hundred feet?

A. Over two hundred feet; that's direct from the wharf towards the Hilo side.

Q. And when you steamed in with the "Niihau" and dropped your anchors, the position that you made them on the sketch, and the boat swung around, at what time or stage of that movement did you have out ninety fathoms of chain?

A. How long we took?

Q. How soon was it before you let out the ninety fathoms of chain? Or, to put it another way. How much chain did you let out immediately upon dropping your anchor?

A. As we was going in we dropped one anchor and with about twenty or thirty fathoms of chain, then come around on the starboard and come up in this point and dropped the other anchor and let her go down.

(Testimony of Capt. Bruhn.)

Q. When you had dropped the first anchor and gave her chain enough to swing, taking that amount of chain and the length of the "Niihau," would it have been a possible operation to have swung in there without interfering with that buoy?

A. Yes, there was danger of interfering with the buoy.

Q. Did you realize that danger at that time?

A. Yes, I realized that.

Q. Can you say whether or not, with your knowledge of the location of the wharf, the fact that it is a thing built on piles. That is not objected to, I presume?

Mr. RUSSELL.—No.

Mr. WARREN.—And the direction of the wind and sea, whether there would be any difference in the strength of the wind and sea back toward No. 1 buoy from the shore as formed with the end of the wharf?

A. The wind and sea?

Q. Yes.

A. There wouldn't be quite as much [329] wind at No. 1 buoy the way we took it from the inshore. Only at times, these heavy puffs come they might strike, and, of course, there may be a little current.

Q. When you sent the first boat in without a surf-line when the "Halcyon" was in her first position of distress and later sent the mate to take soundings with a surf-line, why did you use a surf-line the second time and not the first time?

Mr. RUSSELL.—That's objected to, if the Court

(Testimony of Capt. Bruhn.)

please, as irrelevant, calling for the conclusion of the witness, not being any question that is intended to illicit fact, asking for the reasoning of the witness.

Mr. WARREN.—I'll add to that question, leaving out anything that may have been said to you by anybody, but confining your answer to reasons which you know yourself and which are based upon your knowledge of the conditions and your experience as a navigator and seaman.

Mr. RUSSELL.—I still object, if the Court please, upon the same grounds. I don't see what reasons the witness entertained would have any effect upon any liability on the part of the respondent.

The COURT.—This is a question which properly belongs to the direct examination. I don't see that it's redirect in any way.

Mr. RUSSELL.—I don't see that it is.

The COURT.—Mr. Russell, have you any objection to this question, Why didn't you use the surf-line when you sent the boat in the first time?

Mr. RUSSELL.—Well, I won't object to that; it is the Court's question.

The COURT.—Why didn't you use the surf-line when you sent the boat the first time?

A. The first time?

Q. Yes.

A. Because the boat went in; we give it the line and they pulled in with the six-inch line, because at the time I didn't know the danger that there was.

Mr. WARREN.—Q. Directing your attention to the matter of the wind, I'll ask you to compare the

(Testimony of Capt. Bruhn.)

strength and velocity and apparent effect of the wind in the position where you sent that first line with a boat [330] behind the wharf and the time you sent the line with the second made with the ship ashore, when she was close ashore, the second time. What was the difference between the wind conditions there in that first position and the second position?

A. That is, the first position early in the morning?

The COURT.—You're talking about the first effort?

Mr. WARREN.—Q. Sending your first line when you were close to the wharf, the "Halcyon's" first position near Waiakea River, as compared with location and conditions of wind where the "Halcyon" was the second time when you were sending a line a second time?

A. The wind kept increasing; heavier squalls.

Q. Now, you have drawn on this chart the position of the "Halcyon" at the place she was when the line broke and she parted; she dropped anchor as H-1. You have drawn the position of the "Niihau" at that time, which is here shown as N-1. You have then drawn the position of the "Niihau" after she had moved and taken the position N-2. Now, when the "Niihau" was at the position of N-2, will you please mark on this chart the locality of the "Halcyon" at the same time? A. Take the "Niihau"—

Q. When you got into that place.

A. Into that place?

Q. Yes.

(Testimony of Capt. Bruhn.)

A. (Witness marks.)

Q. Mark that H-2.

(Mr Warren marks.)

Q. After that did the "Halcyon" get any further in?

A. She gradually commenced to move in there with the seas and wind; she might hold for a little while when there was a kind of a smooth spell; of course, when these large seas come she kept moving.

Q. Now, will you mark on the chart the position that you have in mind when you were testifying on cross-examination that she had moved to the point as far as she ever got toward the shore; her [331] extreme position towards shore?

A. Her extreme position while we were—

Q. At any time.

A. That is, the position that she was in?

Q. When she was in her most extreme position nearest the shore; not merely a question of her stern, but the vessel as a whole. (The witness marks.)

Q. Mark that H-3.

(Mr. Warren marks.)

Q. Now, when she was in position H-3, her extreme position, at that time had you any lines on her?

A. Yes, sir; the time that we were getting the line on.

Q. When you were getting it on?

A. Yes, getting it on.

Q. When you sent a six-inch line that second time, that is, on the second occasion you sent a six-inch

(Testimony of Capt. Bruhn.)

line, what line was that? A. On the second line?

Q. The second?

A. The second line that was sent over when she was in this position?

Q. The first one when she was in that position; that was a six-inch line, was it? What one was it? Was it the same line that had been used before?

A. It was the same line had been used before.

Q. What was the distance between the "Halcyon" and the "Niihau" when you sent that line?

A. The distance?

Q. Yes, between the steamer and the schooner when you sent that line?

A. The distance then was in the, between the two vessels; that is, before the lines were heaved taut, the distance between the two vessels, I should judge then was in the neighborhood of around ninety fathom or so.

Q. Was the remaining part of that line long enough to reach; that six-inch line that you had left after the first break in the morning, was that long enough to reach?

A. There was a four-inch line attached to it. [332]

Q. By the time the schooner made fast—

A. The six-inch line covered enough to make fast after the vessels were hove in; we were hove up taut. There was length enough left.

Mr. WARREN.—That's all.

Recross-examination.

Mr. RUSSELL.—Q. You say ninety fathoms was

(Testimony of Capt. Bruhn.)

the distance between the "Niihau" and the "Halcyon" at the time you got the first line made fast? Well, you judge it to be ninety fathoms from the length of that line; that's the way you know it is ninety fathoms, is that right?

A. I said it was in the neighborhood of ninety fathom.

Q. What do you base your judgment on; from the length of the line, don't you?

A. It's the length of the line. And part of the line we had aboard and the other part that was fast to the schooner.

Q. Captain, you say twenty fathoms was gone; that would leave a hundred fathom?

A. There was ninety fathoms between the vessels; I say one end was made fast to the ship and the other end we had line enough on the "Niihau" to heave her in position with the four-inch line attached.

Mr. RUSSELL.—That's all.

The COURT.—I would like to have you get out the distance between the two ships when he got his line fast.

A. The distance between the two ships.

Q. After you had your six-inch line fast on both vessels.

A. Well, the distance between the ships then when the lines were fast and we was ready to pull on it, after the two lines were on, I should judge that was somewhere between sixty and seventy fathoms; in the neighborhood of that; that is where the two lines were attached.

(Testimony of Capt. Bruhn.)

Mr. RUSSELL.—Captain, did you ever measure that line, the remaining part of that broken line; the part that was left on the “Niihau”? Did you ever measure that? [333]

A. The line that was left on the “Niihau”? We generally measure those lines when we go aboard.

Q. Captain, please just answer my question. Did you ever measure the long part of that line that was broken? A. No, I didn't measure the long part.

Mr. RUSSELL.—That's all.

The COURT.—Captain Bruhn, there's one feature of this that I am not quite clear about. When the line parted, when you were towing the “Halcyon” the first time and the line parted, were your anchors still down?

A. The first time, judge, when we towed her out?

Q. Yes.

A. No, our anchors was up then because we had the schooner; we was pulling her. For instance this would be the Hilo wharf here and here we come along in this direction here; of course, judge, here was the bow; we was going along this way and coming around the wharf, and the schooner was following us straight; we made the first turn, and likely as she come along she couldn't make the turn that quick, and that wind and sea, the breakers would keep her; she went ahead and us going the other way. Here was the buoy and here the tow-line. In fact, the way the schooner was coming she was pulling this way and this line was afoul—

Mr. RUSSELL.—I object. I move to strike the

(Testimony of Capt. Bruhn.)

statement of the witness that the line went afoul of the buoy. I asked him directly yesterday, do you know how that line parted? Do you know it went afoul of the buoy? He said he didn't know.

The COURT.—That's all, Captain Bruhn.

Testimony of David Hau, Jr., for Libellant.

Direct examination of DAVID HAU, Jr., a witness on behalf of libellant, called and sworn.

Mr. WARREN.— [334] Q. David, did you go out in the launch with Manuel the morning that the schooner "Halcyon" got in trouble in Hilo?

A. Yes, sir.

Q. Now, where did the launch go?

A. The launch go over to that vessel.

Q. To the schooner? A. To the schooner.

Q. And how close did you go to the schooner?

A. We go right close to the schooner.

Q. What part of the schooner? A. The bow.

Q. And did you hear anything said between Manuel and the captain of the ship?

A. Yes, sir, I heard Manuel call to the captain to give us a line, make fast to the buoy, and the captain he said no want it, no want no line.

Q. What else was said?

A. He said, well, I'm all right.

Q. Who said that?

A. The captain on this schooner.

Q. Yes.

A. The captain on the schooner, he told Manuel I'm all right; Manuel told him he going to drift; cap-

(Testimony of David Hau, Jr.)

tain, he said he ain't drifting.

Q. Did the captain ask Manuel to do anything?

A. Manuel? That's when he said make a line on the buoy, but the captain didn't want it.

Q. Was anything said about a line on a buoy?

A. He told us to go there and get a line, but the line is under the chain.

Q. Did the launch go over there?

A. We go over there and try hard to pull; we can't pull.

Q. Then what did the launch do?

A. The launch come back again.

Q. Anything more said to the captain by Manuel when you got back? Did you tell the captain anything about that line?

A. Yes, Captain told us, how's that line? We told him jammed. Then Manuel kept telling him give a line, make fast to the buoy; he said, "I'm all right." [335]

Q. Was that after you got back from the buoy? He said that again? A. Yes.

Q. Tell us just as near as you can remember, were those all the words Manuel said?

A. The captain said, "All right"; we got nothing to do after that.

Q. Was there anything more said about what the "Haleyon" might do, the schooner? Do you remember anything else that was said there? When was it that Manuel said to the captain, you're drifting? Was that the first time or the second time?

(Testimony of David Hau, Jr.)

A. The second time, we come.

Q. And did the captain and Manuel say anything else about drifting?

A. Manuel told the captain, "You're drifting," but the captain said, "I'm all right; I ain't drifting."

Mr. WARREN.—Cross-examine.

Cross-examination.

Mr. RUSSELL.—Q. When you first asked him if he wants a line to the buoy you remember he say that he didn't have any more line?

A. He didn't say he got no line; he said he want no line on the buoy.

Q. You remember you asked him if he want line and he said, "You go over and get that line from the buoy"? A. No, no.

Q. Then afterwards he said, "Go over and get the line from the buoy"?

A. Yes, after that he told us go there and get that line.

Q. Did you see that boat drifting?

A. Yes, sir, we saw it's drifting; that's the reason we hollered for line make fast with the buoy.

Q. You saw him drifting same time that the tow-line parted?

A. When the tow-line was cut the anchor is down; he dropped down his anchor; going up little all the time.

Q. Dragging anchor? A. Yes. [336]

Q. Did you see the tow-line cut?

A. I saw the tow-line is right straight up and

(Testimony of David Hau, Jr.)

down the bow; I don't know it's broke or not; about eight fathom long that line from the bow right down straight.

Q. Into the water? A. Yes.

Q. So you didn't see it break?

A. Didn't see it break.

Q. You saw it after it broke, after the tow-line parted then you saw it dropped down?

A. Dropped down.

Mr. WARREN.—That's all the witness I expect to call in Hilo, your Honor. There is one, possibly two, others in Honolulu besides other evidence of value, but I have no other witnesses to call at this time.

Recess.

Testimony of F. W. Filler, for Libellee (Recalled).

Direct examination of F. W. FILLER, recalled on behalf of libellee.

Mr. RUSSELL.—Q. Captain, I don't recall whether you were asked the other day as to what time it was that you saw the "Halcyon" at the time they sent a line to her when she was near the beach?

A. I don't know as I have very clear recollection; must have been somewhere between seven and eight o'clock to the best of my knowledge.

Q. Captain, will you state what your experience has been at sea, or will counsel. I want to ask him something in regard to navigation.

Mr. WARREN.—His qualifications as a mariner are admitted.

(Testimony of F. W. Filler.)

Mr. RUSSELL.—What was the sea at that time?

A. What was what?

Q. What was the sea, how was the sea at that time? [337] A. Fairly rough.

Q. Could you say how many feet were the swells?

A. Oh, that's pretty hard to estimate.

Q. Your best judgment.

A. About a four or five-foot sea running; which is considerable sea in a harbor.

Q. Captain, what would have occurred if the "Halcyon" had gone ashore? What would have happened to her?

The COURT.—At what place?

Mr. RUSSELL.—Q. At the place where you saw her touch.

Mr. WARREN.—Assume the wind and sea to be?

Mr. RUSSELL.—Well, as it was at that time?

A. Well, I think the vessel would have gone broadside on to the beach and there certainly was sufficient swell to pound the vessel on the sand, very likely and swing a little over; possibly she might have thrown her out; anyway she might have spring her butts; the joints, you know; and rendered her absolutely unseaworthy.

Q. How long a time do you suppose it would take?

A. That depends on the state of the vessel and her condition at the time she goes on the beach.

Q. Did you get close enough to the vessel to examine her? Assuming that she was a pretty old vessel?

(Testimony of F. W. Filler.)

A. Three or four hours would seal her fate.

Q. How long a time would it take before she would break up.

Mr. WARREN.—I don't think this is quite within the range.

The COURT.—You must put a load of lumber into her.

Mr. RUSSELL.—Q. Assume that she had a load of lumber, her hold very well filled?

A. Will you kindly ask me your original question?

Q. Assuming that she had, that the hole was pretty well filled with lumber and that she was an old boat? [338]

A. What is your question, Mr. Russell?

Q. How long a time would it take before she would break up?

Mr. WARREN.—I wish to stand on my objection to that as an hypothetical question; an hypothetical question can only be based upon matters which have the support of some evidence in the case.

Mr. RUSSELL.—I'll withdraw the question. Captain, assuming that the vessel which you saw, that is, the "Halcyon," as it was there on shore, was a pretty old vessel; say in just a sufficiently seaworthy condition to come across the Atlantic with a load of lumber, and that she had gone ashore, keeled over broadside, can you state, can you give us an opinion as to the minimum time before she would break up?

Mr. WARREN.—The same objection lies to that question, your Honor.

(Testimony of F. W. Filler.)

The COURT.—I allow the question.

A. Well, in the face of subsequent conditions, I don't believe the vessel would have gone to pieces at all. I don't believe that the worst sea would be sufficient to tear that vessel to pieces, although the sea was sufficiently rough enough to render her unseaworthy.

Q. And if she had been broke up, Captain, can you give any opinion as to the feasibility of having saved the cargo or a substantial part of it?

Mr. WARREN.—I think objection lies; it doesn't appear that this witness is an expert on the question of salvage.

Mr. RUSSELL.—Captain, have you ever been aboard a vessel or taken any connection with a vessel that had gone ashore? A. Yes.

Q. And have you ever been in a vessel or taken any part in salvaging cargo or any part of the cargo of a vessel that had gone ashore? A. Yes.

Mr. RUSSELL.—Now, I will ask you, Captain—

Mr. WARREN.—I want to put a few questions on cross-examination.

The COURT.—Yes. [339]

Mr. WARREN.—Q. What has been the extent of that experience, Captain?

A. I was in two wrecks myself.

Q. Where?

A. One on the coast of the north of Sweden, and I've seen a number of stranded vessels in Kahului and had a hand in salving part of the vessel, part of the cargo.

(Testimony of F. W. Filler.)

Q. Any lumber cargoes?

A. No, no lumber cargo.

Q. Have you ever, in your experience, had to do with the stowing of lumber in the hold of a vessel?

A. Yes.

Q. Do you know how it is stowed? A. Yes.

Q. And the discharging of lumber cargoes from the hold of a vessel of this character?

A. Considerable experience in that.

Q. Any with a lumber vessel on the beach?

A. I've had no experience with a lumber vessel on the beach, no.

Q. Your experience in discharging lumber has been simply at a dock or wharf? A. Yes.

Q. Have you had experience in discharging cargo from any wrecked vessel ashore?

A. Yes, at least one, Kahului; the "Spartan."

Q. But no lumber?

A. No, she had coal and we salvaged the vessel or at least part of the vessel; her rigging, her sails, furniture.

The COURT.—I consider his experience in handling lumber, loading lumber, qualifies him.

A. I think it would have been possible to save the greater portion of that cargo.

Mr. RUSSELL.—That's all.

Cross-examination.

Mr. WARREN.—Q. You say if she had not broken up—

Mr. RUSSELL.—Oh, excuse me; that suggests

(Testimony of F. W. Filler.)

something that I overlooked. [340] Captain, if she had broken up, what, in your opinion, would have occurred with reference to the probability of saving some of that cargo, a large portion of it?

A. Well, if the vessel had broken up, the cargo would have come ashore of its own accord in more or less damaged condition.

Q. Can you give any opinion as to what proportion of that cargo would be saved whole?

A. That's problematic.

Mr. WARREN.—The question in your mind, Captain, as to how long it might be before the vessel broke up is really dependent to a considerable extent upon the condition of the vessel herself?

A. Yes, and the severity of the storm.

Q. Now, if a vessel of that character or any vessel laden with lumber goes broadside and she is pointed a few times broadside, isn't it a fact that her cargo will shift and be tilted over to the shore side so that it will cause the vessel—

A. Not if she's been stowed properly with lumber.

Q. That you don't know?

A. No one can tell, but there is every reason to believe the cargo will be very much intact.

Q. What are your reasons for stating as you have that she wouldn't have broken up?

A. That storm wasn't severe enough to sufficiently wreck that vessel to tear her open; in the first place, she was loaded full of lumber; there is

(Testimony of F. W. Filler.)

practically a whole unit for the water to pour over.

Q. You don't believe that the lumber on the deck would have been displaced?

A. Had the vessel been discharged yet or was the deck load still on.

Q. There is evidence that part of the deck load had been taken off? A. In that case I couldn't say.

Q. If part of the deck load had been taken off you couldn't say the rest would not come over? Then the condition would exist where there would not be that unit and there would be destruction of her superstructure?

A. That might have been, but I doubt that particular storm was sufficiently severe enough to do that. [341]

Q. Do you know anything at all of the wreck of the "Kilauea-Hou" about the same place where her boiler lies on the beach?

A. That was long before my time.

Q. You don't know how long it took her to break at all?

A. No. I've seen the ship "Spartan" stand six weeks on the reef at Kahului.

Q. What about the "Helga" that went on the reef at Waikiki? A. Which one?

Q. The "Helga" that went ashore at Waikiki?

A. She was on the coral, wasn't she?

Q. She was what?

A. On a coral bottom; a great deal depends upon what the ship is resting on.

Q. But you don't know how long she lasted?

(Testimony of F. W. Filler.)

A. No.

Q. A vessel in Hilo bay, if not staunch and strong, might break up any time?

A. I merely venture to state that that particular storm which was raging at the time could not have broken up that vessel; there wasn't sufficient sea.

Q. Not within the forty-eight hours that followed? A. No, I don't think so.

Q. That's the worst storm Hilo's had in many years, isn't it?

A. I don't know that it was any worse than any other.

Q. Do you recall any storm that was worse, before?

A. I've seen more severe weather when there wasn't any wind at all. They are much more destructive, the wind storms.

Q. I understand that, assuming she was a fairly old vessel you think she would have heeled over in three or four hours?

A. She would have what? That hasn't anything to do with the age of the vessel, the heeling over of her.

Q. I understood that was part of the question, assuming that she was an old vessel and assuming she was loaded with lumber, how long would it have taken her to break up, to go broadside?

A. I haven't answered any such question. [342]

Q. What about the currents in Hilo bay, Captain, what way do the currents run?

A. With reference to this wreck?

(Testimony of F. W. Filler.)

Q. Yes, along this beach here.

A. Of course, they've got a little current to contend with, you know, coming in from the Wainaku Point and the current naturally is drawn on by the efflux of the Waiakea River; so there is usually a current from the north to the south.

Q. Where does the flotsam and jetsam, sea-weed and so on, usually accumulate in Hilo bay?

A. Some of it right behind postoffice or Hilo Mercantile Co. warehouse; some to Waiakea, but in that case, to Waiakea, it drifts out to sea.

Q. What lumber is ground up and ingrained with sand, does that affect its commercial value, do you know?

A. Just simply the sand alone wouldn't do it unless the edge of the lumber had been sufficiently destroyed to necessitate resawing. It would naturally affect it some, few dollars a thousand.

Q. If the vessel were to break up and the cargo become subject to the wash of the sea, you are merely assuming, you're assuming merely that probably the greater part of it could be picked up?

A. I presume here in Hilo it could, yes.

Q. You do not think it quite probable that it would be scattered around Hilo bay and Cocoanut Island. I believe a great deal of that lumber would find its way to Cocoanut Island, of course; a great deal of it would be washed upon the beach.

Q. And some of it probably find its way outside and get washed up on some of the other shores?

A. Some of it might go straight to sea.

(Testimony of F. W. Filler.)

Q. Have you ever bought and sold lumber commercially to any great extent?

A. Yes, in Kahului for seven years and a half, eight years. [343]

Q. And the breakage of sticks of a full length of the value of the remaining parts a great deal, does it not?

A. Well, that again depends upon what you are breaking; certain classes of lumber you can use it at short lengths.

Q. Short length lumber is always considerably cheaper than long length?

A. Yes, certainly, sure.

Q. Do you know what sort of cargo it was?

A. I understand it was redwood.

Q. You don't know what sort of pieces?

A. I don't recall; all redwood cargo here is mostly flat lumber.

Q. Flat lumber is very likely to be injured by splitting and cracking than timbers? A. Yes.

Mr. WARREN.—That's all.

Mr. RUSSELL.—That's all.

The COURT.—Is there any distinction in your mind between a vessel breaking up and a vessel becoming a total loss?

A. Well, a vessel can be so badly injured by the pounding of the sea so as to be unfit for service.

Q. Then she is a total loss?

A. She is a total loss.

Q. Suppose a vessel going ashore on a sand beach,

(Testimony of F. W. Filler.)

lying there for some hours and becoming imbedded in the sand and the sand rushing around her without injuring her, might she be a total loss from being so imbedded?

A. In so far as it would cost more than the vessel is worth to dig her out.

Q. Is that one of the things that happens on the sand seashore?

A. Yes, that is, as a matter of fact, what makes it so much harder to salve the vessel.

Testimony of J. D. Easton, for Libellee.

Direct examination of J. D. EASTON, a witness on behalf of libellee, called and sworn. [344]

Mr. RUSSELL.—Q. Mr. Easton, you are the assistant manager of the Hilo Mercantile Co.?

A. I am.

Q. And the Hilo Mercantile Co. is the local agent of the Charles Nelson Co., the owner of the schooner “Halcyon”?

A. Not local agent in my interpretation of the word agent. We represent them so far as their lumber vessels are concerned. We have no regular agency for the Charles Nelson Co.

Q. And the lumber part of the cargo aboard of the “Halcyon” was consigned to the Hilo Mercantile Co.? A. It was, yes.

Q. Had you been aboard the “Halcyon” when she came in?

A. I went aboard when she tied up to the wharf.

Q. And was the hold, what was the condition of

(Testimony of J. D. Easton.)

the hold in regard to the amount of lumber that was in it? A. The lumber on her deck?

Q. No, in the hold?

A. I couldn't see the lumber in the hold at that time.

Q. Then with regard to the lumber on deck? Was there, what proportion of that was taken off?

A. What proportion of that was taken before she got into trouble?

Q. Yes.

A. A very small portion; if I recall correctly she only worked one day and probably between forty and fifty thousand feet taken off.

Q. And she still had some lumber on her deck?

A. When she drifted from the wharf?

Q. Yes. A. She did, considerable.

Q. Do you know what proportion of the entire cargo she had on board, on deck?

A. I don't know exactly; I could tell fairly accurately.

Q. What is your best recollection?

A. About forty per cent of it would be on deck; sixty per cent [345] in the hold; redwood cargo.

Q. And what with regard to the more valuable lumber or less valuable lumber; was that on deck or in the hold? Which was on deck and which was in the hold?

A. That would be about the same; sometimes they load the more valuable lumber in the hold. They try to get the clear lumber in the hold. I don't know what the conditions were as far as she was concerned.

(Testimony of J. D. Easton.)

Q. This cargo was consigned to two firms?

A. Two firms, Hackfeld and the Hilo Mercantile.

Q. And part of that you say had been taken off?

A. Part of our cargo had been taken off; a very small part of it.

Q. And did you see the "Halcyon" on the morning that she was in trouble? A. I did.

Q. And what time did you arrive on the scene?

A. When I first saw her?

Q. Yes. A. About ten minutes to seven.

Q. And where were you?

A. Coming up from the house to work; right on the road there by the bridge across the Waiakea River.

Q. And did you watch her until the "Niihau" sent a line to her?

A. Practically all the time after that; not all the time. I came up to the store and rang up Mr. Nicholls. I went down the beach and watched her and off and on I was on the beach all morning until they got her out of the place she was.

Q. Well, did you see her before they sent a line to her? A. That morning? Yes, oh, yes.

Q. I mean just immediately before.

Mr. WARREN.—The second line?

Mr. RUSSELL.—Yes. And that was what time?

A. That they sent a line to her? Between eight and nine o'clock. I don't know exactly what time.

Q. And did you see the "Niihau" there?

A. Yes, I saw the "Niihau." [346]

(Testimony of J. D. Easton.)

Q. And did you take any particular notice of the "Niihau"?

A. Yes, I noticed her about quarter to eight, I think it was. The "Niihau" changed her position. She was lying considerable distance offshore. About quarter to eight she came in closer; then they had a shore boat alongside her; one of their shore boats and some men in it. I noticed that particularly.

Q. How many times did you see the "Niihau" move over, change its position?

A. Only once that I recall.

Q. With regard to the railroad wharf, where was the "Niihau" before you saw her change its position?

A. She would be north, almost due north of the railroad wharf.

Q. And then she changed her position to the point where she began to tow the "Halcyon"?

A. Yes; I'm under the impression that she came in and dropped her anchor and then backed up.

Q. And how long a time elapsed from the time that she dropped her anchor at the last point, until the boat was sent out to the "Halcyon"?

A. About an hour or an hour and a quarter. You mean she changed her position from where she was when I first saw her?

Q. Yes.

A. After she dropped her anchor, after she changed her position, about an hour or an hour and a quarter.

(Testimony of J. D. Easton.)

Q. And were you noticing the "Niihau," taking particular notice of the "Niihau"? A. Yes.

Q. Was there any reason for your taking notice of her?

A. Yes. I was wondering why they didn't go and give the ship a line.

Mr. WARREN.—I move to strike that out as a conclusion of the witness, the mind of the witness having no bearing on the operation of the "Niihau."

The COURT.—I think I will sustain the objection.

Mr. WARREN.—And the answer be stricken.

Mr. RUSSELL.—Will you state whether or not the fact of the Hilo [347] Mercantile being the owners, that is, being the consignees, had anything to do with your observations? A. It did.

Mr. WARREN.—I object to that because it's sufficient the witness made some observations.

The COURT.—I think that's testimony.

Mr. RUSSELL.—Did you observe any distress signals going up on the "Halcyon"?

A. I did; at least, I presume they were distress signals; they were some kind of signals.

Q. What was it you observed?

A. Flags; I don't recall though what they were. He run up two or three flags.

Q. And with regard to the time that the little, that the boat from the "Niihau" went to the "Halcyon," did this flag, or these flags go up before or after they had started from the "Niihau"?

A. The flags were raised at the mast of the ship and the boat was immediately put out from the

(Testimony of J. D. Easton.)

"Niihau"; that is, the small boat.

The COURT.—At the same time?

A. Just as soon as they went up she went right out.

Q. How long a time elapsed from the time the flags went up until the boat started?

A. Immediately afterward.

Q. How long a time had the boat remained along, near the "Niihau" before it started?

A. I should say fifteen minutes, twenty minutes. If I recall correctly, fifteen minutes.

Q. And did you see the "Niihau" as it towed the "Halcyon" out? A. I did.

Q. To its anchorage in the bay? A. Yes.

Q. At what time was it that they stopped towing?

A. When they stopped the tow?

Q. Yes. A. It was nearing ten o'clock.

Q. Can you give us any more accurate time?
[348]

A. I have a memorandum on the manifest of the ship just what time they had her out.

Q. When you made that memorandum was it correct? A. It was correct.

Q. Have you seen that recently?

A. I looked at it before coming up here.

Q. Would that refresh your recollection as to the time? A. It did.

Q. What was the time?

A. Ten-fifteen was the time I had on that memorandum.

Mr. RUSSELL.—That's all.

(Testimony of J. D. Easton.)

Cross-examination.

Mr. WARREN.—Q. Did you see the steamer boat of the “Niihau” when it was first alongside the steamer, before it put off?

A. I don’t know whether I saw it when it was first alongside; after the “Niihau” moved alongside to a closer anchorage, I noticed that boat alongside with some men in it.

Q. Could you observe from where you were, what they were doing?

A. I couldn’t see what they were doing.

Q. And between the boat and the steamer, could you see what, if anything was being done?

A. No, I couldn’t see anything. They was evidently doing something. They were moving around in the small boat.

Q. They were moving around, you could see that?

A. Yes, I could see them moving around.

Q. How long after the distress signals went up was it before the small boat arrived at the “Halcyon” with the line?

A. Between six and ten minutes, I should say. It was going in very fast; they had the wind behind her.

Q. Are you positively sure that that boat didn’t leave the steamer until those flags had gone up?

A. I am sure of that.

Q. You are sure it wasn’t on its way there?

A. When the flags went up? [349]

Q. Yes. A. I am sure.

Q. From your own observations you distinctly saw

(Testimony of J. D. Easton.)

those signals go up before that boat left the steamer?

A. Yes, sir.

Q. But then, you say it left immediately.

A. Immediately the flags went up the boat left the ship, left the steamer.

Q. And you mean that the "Niihau" lay in the position where she was already an hour and quarter before the small boat left?

A. I wouldn't say positively whether it was an hour or an hour and a quarter or not. I don't know just what time she changed her position from her anchorage off of the railroad wharf to the inside anchorage.

Q. Is that what you mean by the hour, from the time she picked her anchors up.

A. I think it was an hour or an hour and a quarter.

Q. From her position off the wharf?

A. No, from the second anchorage. When I first saw her, it was seven o'clock in the morning. The "Niihau" was anchored off the railroad wharf; and some time after that she changed her anchorage.

Q. The time that was taken up in making that change you do not include in that hour or hour and a quarter?

A. She was on her insider anchorage at least an hour before she put the boat out.

Q. Does that mean from the time she arrived there?

A. From the time she arrived out here near shore?

Q. Yes.

(Testimony of J. D. Easton.)

A. I saw her come in and drop her anchors.

Q. Do you know after she dropped her anchors, what she did?

A. She backed up a bit and came in closer to the shore. [350]

Q. You saw her drop her anchors; saw that she was paying out chain. You say you don't know when that small boat was first alongside of her?

A. I don't know just what time; some time after she dropped her anchor I noticed this small boat alongside.

Q. How long after?

A. I couldn't say; might have been half an hour, might have been fifteen minutes.

Q. You didn't note those times particularly?

A. No, I didn't note those times.

Q. Do you know from which side of the deck of the "Halcyon" or from what part or portion of the deck the cargo had been removed?

A. No, I couldn't say as to the "Halcyon." I could say as to the general rule in unloading a ship.

Q. I'm asking you as to the "Halcyon."

A. I couldn't say.

Q. You saw her after the part of the cargo had been discharged? You didn't see her in that condition?

A. No, I didn't see her because she had only discharged the one day.

Q. Did you see her afterwards so that you could know what part of the cargo had been discharged?

A. I saw her after she went alongside the wharf

(Testimony of J. D. Easton.)

again to finish her discharging.

Q. Did you then notice? A. I did not.

Q. What then would be the ordinary way, assuming she was discharged in the ordinary way. Where would it be taken from?

A. As a rule, they take the lumber off the deck; take the most from the left-hand side so as to give her a list.

The COURT.—Which side?

A. I don't know if it was port or starboard.

Mr. WARREN.—She was discharging for the railroad wharf? [351] A. Yes.

Q. And her bow was facing north? A. Yes.

Q. And when she was in that way what was done?

A. Most of the lumber is taken off the port side first: that is, the first few cars of lumber, so as to weight her down on the starboard side to give her a list inshore. They would take a little from off the port side then they would work on the starboard side.

Q. So you think in taking off fifty thousand feet they would take it off both sides?

A. Take it off both sides; most on the left-hand side.

Q. And for that purpose it would be necessary to a certain extent loosen the bindings or presses, whatever it may be that the cargo is secured with on the deck?

A. The lashings are all loosened before she commences discharging.

Mr. WARREN.—That's all.

(Testimony of J. D. Easton.)

Mr. RUSSELL.—That's all.

The COURT.—Q. You didn't see her earlier in the morning before she had a tow-line out to the "Haleyon" when the "Haleyon" was off the mouth of the Waiakea River?

A. She was off the mouth of the Waiakea River when I first saw her ten minutes to seven; she was right off of that old, we call it the Hackfeld wharf; that old wharf there just this side of the railroad wharf.

Q. All that you have been telling about happened after she had been towed out a little ways and anchored again.

A. I don't know of my own knowledge; I understood she had a tow during the night. I did not see that.

The COURT.—That's all. [352]

Thursday, August 19, 1915.

Testimony of A. Duvel, for Libellee.

Direct examination of A. DUVEL, a witness on behalf of libellee, called and sworn.

Mr. RUSSELL.—Q. Captain, what is your business?

A. I am agent for the Pacific Guano & Fertilizer Co., Honolulu.

Q. That is you are the Hawaii agent. A. Yes.

Q. And have you had any sea-faring experience?

A. I have.

Q. Will you state what that experience has been?

A. Well, I have been following the sea for 19 years.

(Testimony of A. Duvel.)

Q. And you have had a master's license?

A. I think I hold one now.

Q. Do you recollect when the "Halcyon" got in trouble here in Hilo Bay?

A. I do not recollect the day but I remember the incident.

Q. And did you see the "Halcyon" at the time that she got so close to the shore or on the shore there that she was towed off by the steamer "Niihau"?

A. I did, sir.

Q. Did you have occasion to examine the vessel afterward? A. I did.

Q. How soon after?

A. After she had discharged her cargo.

Q. You examined her with the view of determining as to her sea-worthiness? A. I did.

Q. Captain, can you state what would have occurred if that vessel had gone ashore? In what manner would she have gone on the beach?

The COURT.—You're speaking now of the second time she was in danger?

Mr. RUSSELL.—Yes.

A. Well, I suppose she would have gone broad-side on.

Q. And keeled over? A. Keeled over. [353]

Q. Then in your opinion, what would have occurred, what would have happened to her?

A. If the rough weather had kept on and she had been there long enough she might have broken up.

Q. How long do you think it would have taken before she would have broken up?

(Testimony of A. Duvel.)

Mr. WARREN.—Under what conditions?

Mr. RUSSELL.—Under the conditions if the weather had continued as it was.

A. Well, it might have taken a week.

Q. Do you know what the weather was, how it continued after that day? A. No, I do not.

Q. And do you recollect the condition of the weather at the time?

A. Well, at the time it was very rough, the roughest sea in the harbor, in fact, I have noticed since I came here.

Q. Do you know how long that condition lasted?

A. No, I do not, I cannot remember exactly whether it was two or three days, or might be longer.

The COURT.—You say it might be longer than two or three days?

A. It might have been longer, I cannot recollect exactly.

Q. You know how long the vessel was held out by the “Niihau,” do you recollect that?

A. I don't know exactly. I believe the “Niihau” got hold of her probably some time in the forenoon, might have been 9 o'clock or 10 o'clock. It might have been later. I believe that was about the time, I am not certain.

Q. Well, do you recollect how soon after she came back to the wharf?

A. No, I do not. I know she anchored outside but when she did come to the wharf, I do not know.

(Testimony of A. Duvel.)

Q. Do you know what the weather was after she left her anchorage outside and came back to the wharf?

A. I believe it was smooth, smooth weather.

Q. Well, Captain, assume that the weather had subsided in the course of a couple of days to a condition as the sea was in at the time that she went back to the wharf, what in your opinion would have occurred to the vessel had she gone on the beach?

A. Will you kindly repeat that question, Mr. Russell?

Q. Assuming that the weather had subsided to a condition as the sea was at the time that she went back to the wharf, what in your opinion would have occurred to that vessel?

The COURT.—If she had gone ashore?

A. That is after she had been ashore?

Q. After she had been ashore.

A. Well, she might have been in such a condition she might have filled full of water.

Q. And what else would have occurred in regard to the probability of sand surrounding it?

A. She might have sunk. Oh, you mean by being at the beach?

Q. Yes.

A. Well, she might have been imbedded in sand.

Q. And how long a time would that condition have remained, that she was imbedded in sand? How long she would remain there imbedded in the sand?

A. Well, she might have been there to-day.

(Testimony of A. Duvel.)

Q. Have you ever had in your experience occasion to observe wrecks?

A. I haven't been in one myself, but I have seen quite a few of them.

Q. And did you ever have occasion to observe any salvage work done from vessels that had gone ashore? A. No, I have not. [355]

Q. Are you able from your experience as a seafaring man and from your observations of vessels that have gone ashore to give an opinion as to the feasibility of saving any of the ship's cargo had she gone on the beach and become embedded in the sand?

Mr. WARREN.—I think, your Honor, that that is objectionable on the witness' answer that he has not had to do with salvage operations.

The COURT.—I will overrule the objection and you will answer that question, yes or no.

A. I have misunderstood the question. I understand the salvage of the vessel.

Q. No, the cargo.

The COURT.—You are to answer that question, yes or no. A. Yes.

Q. What is your opinion in that regard?

Mr. WARREN.—I do not understand whether the question relates to the vessel or to the cargo.

Q. Cargo.

A. I have been employed in the salvage of the cargo, but not in the salvage of the vessel.

Q. What is your opinion as to the feasibility of having saved the cargo or a substantial part of the cargo of that vessel?

(Testimony of A. Duvel.)

Mr. WARREN.—I'd like to ask the Captain what kind of cargo salvage have you done?

A. General cargo.

Q. Not lumber cargoes?

A. No, I have not been in lumber cargoes. In general cargoes, I have assisted myself.

Q. Merchandise and so on? A. Merchandise.

Mr. RUSSELL.—What is your opinion, Captain?

A. I think that cargo could have been saved. [356]

Mr. RUSSELL.—That's all.

Cross-examination.

Mr. WARREN.—Q. You stated Captain that you made an examination of the "Halcyon" after she had been unloaded? A. I did.

Q. As to her condition for the purpose of determining whether she was able to *do* to sea, is that right? A. I did.

Q. And in fact you were one of three surveyors who made a survey of that vessel in an official capacity? A. I was.

Q. Now, the recommendation at the conclusion of your survey of that vessel was that you did not consider the "Halcyon" fit for the voyage in her condition? A. That's right.

Q. Will you describe a little more particularly what condition she was in at that time?

Mr. RUSSELL.—I object to that as immaterial and irrelevant.

A. I remember some of it, I might not remember it all.

The COURT.—How is it irrelevant?

(Testimony of A. Duvel.)

Mr. WARREN.—On the question of how soon she might have broken up on the beach.

A. I know her planking was pretty bad outside in the butts. She was leaking pretty badly in there. She was rotten.

Q. What was rotten?

A. Some of the planks outside, especially in the butts where the planks joined.

Q. Above or below the water line?

A. That was above the water line.

Q. Did you ever make an examination of her below the water line?

A. We had a diver and he said a part of her keelsome was gone, [357] if I remember right, and that she had opened up about 20 feet from the stern post in a line along the *kneelsome*, that is, if I remember right. I cannot remember exactly, that is about a year and a half ago.

Q. Would your recollection be refreshed by seeing a copy of the survey and the report you made at that time? A. It certainly would.

Mr. RUSSELL.—Here's one right here.

Mr. WARREN.—Is this a copy of that survey and report?

(Mr. Warren hands the witness a document which the witness reads to himself.)

A. That's right, that's a copy.

Q. This report, as you have just looked it over as you now recollect it, is a correct statement according to your best knowledge and belief as to the condition of the vessel? A. Yes.

(Testimony of A. Duvel.)

Mr. WARREN.—I would like to offer a copy of that report in evidence.

The COURT.—You have no objection, Mr. Russell?

Mr. RUSSELL.—Why, no, there will be no objection.

(Libellant's Exhibit "C.")

Q. So that when you were unable as a matter of fact to make an exterior examination of her hull below the water line, your examination was made inside below the water line, was it not? A. It was.

Q. And it was that condition which you found inside which lead to your conclusion that the hull below the water line must be in such a bad condition as to render the vessel unseaworthy? A. Yes, sir.

Q. The divers' report which is attached here George Haggerty is made part of the report, was there a subsequent and more full report made by the divers?

A. There was a later one by somebody else, some other diver. [358]

Q. Was that in any way made in connection with your survey as part of it? Was there a subsequent examination made by any other diver than Haggerty? A. It was.

Q. And your board of survey made another examination of the vessel after repairs had been made?

A. It did.

Q. And this is a copy of the subsequent report after repairs had been made?

(Mr. Warren hands a document to the witness

(Testimony of A. Duvel.)

which the witness reads to himself.)

A. That's right, that's a copy.

Mr. WARREN.—You identify that as a copy of the divers' later report after repairs were made. There is no objection I presume to copies instead of originals?

Mr. RUSSELL.—No objection.

(Libellant's Exhibit "D.")

Mr. WARREN.—That's all.

Redirect Examination.

Mr. RUSSELL.—Q. Captain, in your final report I will refresh your recollection. You gave it as your opinion as follows:

(Mr. RUSSELL reads.) You have a distinct recollection of that? A. I do.

Mr. WARREN.—In this first report mention is made of the fact of the schooner having struck on the reef three times on going in, on what is that based? A. That's on the say-so of the crew.

Q. And the captain?

A. I don't know whether the captain said so, I can't recollect.

The COURT.—You mean going into the harbor?

A. Going into the harbor. Instead of going in the proper entrance, she came over the reef.

A. In your testimony in speaking of the divers' report you [359] said he reported the bottom opened up from the post so many feet?

A. It was from the stern post running forward I think he said 20 feet.

Q. What does that mean, opened up?

(Testimony of A. Duvel.)

A. The plank next to the *kneelsome* supposed to have opened up.

Q. Making an —

A. Making an opening for the water to rush in.

Testimony of E. T. Nichols, for Libellee.

Direct examination of E. T. NICHOLS, a witness on behalf of libellee, called and sworn:

Mr. RUSSELL.—Your name is E. T. Nichols.

A. Yes, sir.

Q. And you are the manager of the Hilo Mercantile Company? A. Yes, sir.

Q. And the Hilo Mercantile Company was one of the consignees of the cargo of the "Halcyon" upon its arrival here in January of last year?

A. Yes, sir.

Q. Mr. Nichols, did you see the "Halcyon" at the time she was— A. Yes, sir.

Q. Did you see her at the time she hoisted her flags? A. Her distress signals, yes, sir.

Q. You saw that? A. Yes, sir.

Q. Where were you at the time that you saw it?

A. On the railroad wharf.

Q. And did you make any note of the time that that was done? Did you observe the time of that?

A. When the signals were broke out, you mean?

Q. Yes. A. Yes, sir.

Q. At what time was that?

A. That was at, if I may be permitted to refer to a memorandum—

Mr. WARREN.—Made at that time? [360]

(Testimony of E. T. Nichols.)

A. A memorandum taken from letters I wrote at that time.

Q. When did you make this memorandum?

A. This morning.

Mr. WARREN.—I don't think that is sufficient.

Mr. RUSSELL.—Is this a file from your office?

A. Yes, sir.

Q. Is that first one a carbon copy of a letter that you wrote to the Charles Nelson Company?

A. Yes, sir.

Q. In January? A. Yes.

Q. Of last year? A. Yes.

Q. Does that refresh *you* recollection as to the time? A. Yes, sir.

Q. And what was the time?

A. In giving the answers I want to be perfectly accurate.

Q. What was that time?

A. At 8:35 in the morning.

Q. Did you at that time observe the steamer "Niihau" in the bay? A. Yes, sir.

Q. And did you see a life-boat or one of the steamer boats leave the "Niihau" for the "Halcyon" with a line? A. Yes, sir.

Q. Now, with regard to when the signals went up, when was this that this boat started for the "Halcyon," before or after?

A. Before or after the signals went up?

Q. Yes. A. After the signals went up.

Q. And do you remember how soon after?

(Testimony of E. T. Nichols.)

A. That is, how soon after the small boat left the steamer? Q. Yes.

A. About five or ten minutes after.

Q. Had you observed the steamer any time before this boat left her? [361]

A. For about an hour and a half before that I was on the wharf at seven o'clock or about seven.

Q. And where was the "Niihau" at that time?

A. You mean in reference to the position in which the "Halcyon" was then lying?

Q. Had you seen her move in?

A. The "Niihau"?

Q. The "Niihau"?

A. Before she put the line aboard the "Halcyon"?

Q. Yes. A. Yes.

Q. From what position did she move with regard to the end of the railroad wharf?

A. Well, she was when I first saw her out towards the end.

Q. On a line with the railroad wharf?

A. Yes, she then changed her position and came back in towards where the "Halcyon" was lying.

Q. Now, how long did she remain at the last position that you name, that is near the "Halcyon" before she sent the boat to the "Halcyon"?

A. You mean in her last position before she sent the boat to the "Halcyon"?

Q. Yes.

A. She was there, I might express it this way; she was there about a half or three-quarters of an hour, probably more like a half an hour. As I was

(Testimony of E. T. Nichols.)

watching her she evidently pulled out her anchor chain and dropped back which would take about fifteen minutes and then she was then apparently standing *of*, a matter of ten or fifteen minutes before the boat had left with a line to the "Halcyon."

Q. What took you down there?

A. Down to the wharf?

Q. Yes.

A. I was telephoned a little before seven that the "Halcyon" was liable to go ashore. [362]

Q. Do you remember by whom?

A. Mr. Easton, one of our employees.

Mr. RUSSELL.—That's all.

Cross-examination.

Mr. WARREN.—Q. After the "Niihau" had moved from her position opposite the end of the railroad wharf and taken up the position nearer the "Halcyon," did you notice where her small boat was just alongside of her before it left, how long it had been there?

A. Apparently the boat had been over her side and alongside of the steamer before she had stopped at her second anchorage.

Q. By stopped, do you mean dropped her anchors or swung to her anchors?

A. Dropped her anchors.

Q. While she was paying out chain?

A. While she was paying out chain.

Q. Could you observe where you were what was being done with that small boat?

A. It looked to me as though there was one or two

(Testimony of E. T. Nichols.)

crew of men in the boat. What they were doing I couldn't see. They were that far off that I couldn't see, only that they were paying a line from the steamer into this small boat or rowboat.

Q. Then are you quite sure that the small boat did not leave the steamer for the "Halcyon" immediately upon the flag's going up?

A. Not immediately. It was a few minutes afterwards. Positive of that.

Q. You are positive it was not before?

A. Positive. I have a very distinct recollection of making a remark.

Mr. WARREN.—I object to that. Tell us what you observed, please?

Q. But it was immediately after?

A. It was immediately so within a matter of five or ten minutes [363] after the signals broke out the small boat left the steamer's side.

Q. How long did it take the small boat to get a line to the "Halcyon" after the flags went up?

A. A matter of about ten minutes.

Q. And they had the line on board?

A. They were alongside and evidently, I should say evidently had the small line.

Q. The heaving-line? A. The heaving-line.

Q. What time did you come down, I mean about how long had you been before the flags went up watching the vessel?

A. I was down there at seven o'clock. Ten minutes of seven was the time I got the telephone at my house. I got into an automobile there and the flags

(Testimony of E. T. Nichols.)

went up at 8:35. It would be an hour and thirty-five minutes.

Q. So that for something over an hour and a half there you were watching her and no flags or signals were sent up from the vessel until 8:35?

A. Not during the time I was there.

Q. At that time, how was the "Halcyon," how close to the shore, or I will put it another way. After the flags went up did she go in nearer to the beach?

A. Yes.

Q. How much?

A. She was dragging her anchor quite a bit. I took a line from where I was sitting to an imaginary point on one of the buildings on the seashore.

Q. From your observation, did she go on the beach with her stern?

A. I don't think that I'm capable of answering that. To me it did not appear as though she was on the beach.

Q. Did her dragging stop before the line got to her?

A. To the best of my recollection, no. She seemed still to [364] be going in but not as fast as she was when the signals broke out.

Q. When her movement began to slow down, isn't it a fact that her bow began to point toward the Wainaku Mill?

A. I didn't notice it from where I stood. I was in about that position almost opposite to her.

Q. You were standing where on the railroad wharf? A. Towards the land end of the wharf.

(Testimony of E. T. Nichols.)

Q. And she seemed to be broadside to you then?

A. Yes.

Q. And before her signals broke out in what direction was she heading? How was she dragging her anchor?

A. Practically in the same direction. She was heading bow end out dragging her anchor and her position did not change from the time I was there to the time that the "Niihau" got her line aboard.

Q. Now, from your position, will you look at this map? From your position at the place near the foot of the railroad wharf across to where she was lying and if she was almost broadside to you then her bow would have to be pointing more or less toward Wainaku Mill?

A. Well, possibly. I didn't notice whether she was lying actually broadside or whether she might be pointing slightly that way, apparently broadside to me.

Q. You would see her starboard side from where you were?

A. I could see one side, that would be the right side facing the bow.

Mr. WARREN.—That's all.

Mr. RUSSELL.—That's all.

The COURT.—After the signal went up did she swing at all toward broadside on to the beach?

A. If she did she swung so very little that I didn't notice [365] her. Apparently to me there was no change in her at all, that is, she had not swung one way or the other.

(Testimony of E. T. Nichols.)

Q. And did you watch her until the "Niihau" commenced to pull? A. Yes, sir.

Q. And then she was in the same position?

A. Practically so. After I saw her line aboard and saw the vessel begin to move, then I left and then viewed her for a matter of some several minutes just opposite the Matson warehouse and saw her towed out into deeper water.

The COURT.—That's all.

Mr. RUSSELL.—That's all. That's all we have to offer at present.

Honolulu, Tuesday, September 14, 1915.

Mr. WARREN.—Q. In this matter, if the Court please, it has been agreed between counsel that Mr. J. A. Kennedy, President of the Inter-Island Steam Navigation Company, that if called as a witness in this case, he would testify that the Inter-Island Steam Navigation Company is the owner of the steamer, "Niihau"; that the vessel's tonnage is 341 tons; her complement is a crew of 37 men and master, and that her value is between forty-five and fifty-five thousand dollars; that is correct, Mr. Russell?

Mr. RUSSELL.—That is correct.

Testimony of A. S. Cantin, for Libellant.

Direct examination of A. S. CANTIN, a witness on behalf of libellant, called and sworn.

Mr. WARREN.—Q. Mr. Cantin, where were you employed on the 13th day of January, 1914?

A. I was employed by the Hilo Railroad Company.

(Testimony of A. S. Cantin.)

Q. And where were you working on the morning of that day, say from seven on?

A. Renewing the piles at the Hilo wharf. [366]

Q. On which side of the wharf?

A. We were renewing the piles on both sides of the wharf, in fact, all over the wharf. We were taking out piles and putting other piles in.

Q. Did you on that day observe the difficulty that the schooner "Halcyon" got into? A. I did.

Q. About what time was it and where in the morning when you first noticed her?

A. We came to work in the morning and I think it was just a little after seven o'clock I noticed the "Halcyon" lying at anchor on the port side of the wharf, that is on the Hilo side of the wharf.

Q. How with respect to the end of the wharf?

A. Well, the place that I was standing seemed to be about the middle buoy and about in line with the smokestack of the Wainaku Mill.

Q. As she laid there when she first came?

A. Yes.

Q. Will you look at one of these charts?

The COURT.—Where were you standing?

A. I was standing about a quarter of the distance down the wharf on the left-end side of the wharf.

Q. From the mainland?

A. From the mainland.

Q. Referring, Mr. Cantin, to this map marked Libellee's Exhibit #2, calling your attention to the railroad wharf? A. Yes.

Q. Asking you to disregard other pencil markings

(Testimony of A. S. Cantin.)

on this map, locate approximately the position of the "Halcyon" as she lay when you came to work about seven that morning?

A. I was standing about in here on the wharf. This is the river here, she was about on that line.

Q. Could you in red ink make a little cross to indicate her position? [367]

The COURT.—It is a good deal better to make a long line.

A. I should think about in here.

Mr. WARREN.—Use red ink please.

A. As near as I could judge.

Q. Now, will you make a little arrow and indicate the way her bow was pointed and how long did she lie there before you noticed any change?

A. I was watching her and it looked to me like she started to drag her anchor.

Q. How long before you noticed that?

A. It must have been about five minutes after I was on the wharf there. It was so unappreciable that I took this range and watched her. She was going back gradually then she seemed to go a little faster and she got in. She was in about this position here.

(Witness marks on the map.)

Mr. WARREN.—Now, we'll mark the first one, position 1 and the second one, position 2, making a little arrow to indicate her bow.

A. That's the bow right in here (indicating). Of course I had no range to tell how she was drifting.

Q. Then what happened?

(Testimony of A. S. Cantin.)

A. I noticed the "Niihau" started at about the time she reached this position here.

Q. Position 2?

A. Position 2, yes, sir. She started out to come over here and then dropped an anchor in about here, I should think as near as I could judge.

Mr. WARREN.—The red ink mark will determine your marks from the other? Indicate the position where the "Niihau" dropped her anchor?

A. It looked to me she dropped her anchor in about here. She dropped one anchor. [368]

Q. Mark that N-1 with a capital N to indicate the "Niihau, N-1."

(The witness marks.)

Q. Then what did she do?

A. Then she started to go ahead. She got back some and then she started to go ahead trying to place her other anchor.

Mr. RUSSELL.—Who started to go ahead?

A. The "Niihau." You see, she dropped one anchor and she was going up broadside to the vessel, at least a little broadside, and she was trying to locate herself from what I could understand, to drop this other anchor. That is what she finally done.

Mr. WARREN.—That's what it appeared to you as you watched her? A. Yes, as I watched her.

Q. When she got her second anchor dropped then what did she do?

A. Well, she commenced to back down towards the beach but as she got in about off here this vessel was on the beach.

(Testimony of A. S. Cantin.)

Q. Now, will you indicate the place where she was, where the "Niihau" was when you say the vessel was on the beach?

A. It must have been in here as near as I can place it.

Mr. WARREN.—Witness marks N-2.

Q. At that time where was the "Halcyon" laying?

A. She was laying on the beach in about this position (indicating). There is a boiler there. I don't know the exact location of that boiler, but she was lying so the stern of her, the boiler was off her stern about in this position here.

Q. About pointing where with respect to the sugar mill?

A. I should say about 20 degree off from that point.

The COURT.—Her bows out?

A. Yes, sir, she was lying between 15 and 20 degrees.

Mr. WARREN.—What was the angle of the "Halcyon" with regard to the beach line?

A. The beach line?

Q. Yes. [369]

A. About 15 or 20 degrees to the beach.

Q. To the beach? A. Yes, sir.

Q. Now, will you mark here the position of the "Halcyon" the best you can, when you say she was in that position?

A. I don't know where this boiler is here. If I could get the line of the boiler I could tell she was

(Testimony of A. S. Cantin.)

lying about in here as near as I could judge, pretty near that position.

Q. Will you mark that H-2?

A. (The witness marks.)

Q. Now, can you tell us, Mr. Cantin, from the time you say you noticed her begin drifting when you arrived there? Did you arrive about seven?

A. It must have been after seven.

Q. Did you notice then she was beginning to move? A. Not for a few minutes.

Q. How long was it before you were certain that she was dragging?

A. Well, first I thought she was surging from the action of the waves, then about, say fifteen minutes afterwards I knew then she was moving.

Q. And how long was it? Give us your best judgment before she got to position 2? I wish to make a correction. I have marked two positions of the "Halcyon" that way. This last one should be 3. Change H-2 to H-3.

A. (Witness makes the change.)

Q. Indicating her position on the beach there?

A. Yes, sir.

Q. When did the "Niihau" begin moving to go to her assistance, about how long after?

A. She started to her assistance when she was in her second position.

Q. That was about when?

A. That was about an hour after I got there as near as I could judge. [370]

Q. And about how long did the operations take

(Testimony of A. S. Cantin.)

before she had a line on the vessel to pull?

A. I should think about an hour and three-quarters.

Q. Before she began to pull?

A. Before she began to pull, yes, sir. Somewhere around there.

Q. Was there any time in your observation of the maneuvers there that the "Niihau" appeared to be lying still and doing nothing?

A. No, sir. I thought that the actions of the "Niihau"—

Mr. RUSSELL.—That's objected to.

The COURT.—Just state what the facts were?

A. Please repeat the question.

Q. (Question read.) A. No, sir.

Q. What sort of weather was it then, Mr. Cantin?

A. Well, it was blowing a very strong gale there and there was considerable surf and sea running.

Q. Anything unusual for Hilo Bay?

A. Well, I haven't had very much experience in Hilo Bay, but there was a very strong wind blowing.

Q. How about the sea?

A. The sea, there was a good swell running.

Q. From your observation of the "Halcyon" could you determine whether or not she touched the beach or went ashore?

A. When they were pulling her off you could see that she landed on the beach and then when a wave would come and lift her up she would pull ahead and that's the only way they got her off.

Mr. WARREN.—That's all.

(Testimony of A. S. Cantin.)

Cross-examination.

Mr. RUSSELL.—Q. After you observed the "Niihau," did the "Halcyon" begin to move? How long a time elapsed before the "Halcyon," before the "Niihau" did anything? [371]

A. The "Niihau" got where?

Q. At the time you first saw the "Halcyon" begin to move when she began dragging the anchor?

A. She was lying near the wharf there.

Q. About four or five hundred feet?

A. Well, let's see.

Q. About five or six hundred?

A. She was about five hundred feet away. I think that wharf is eight hundred feet long.

Q. And how soon after you saw her begin to move, did you notice anything being done by the "Niihau"?

A. The only time I observed the "Niihau" was when she got in the second position, her appearance out in that vicinity making this maneuvering of dropping her anchor.

Q. You have reference to the position she was in at the time she was pulling the "Halcyon" off the beach, as you say?

A. The first position I saw her to the second position.

Q. That was the first time you noticed her?

A. That I noticed the "Niihau," yes.

Q. How long a time was that after you say the "Halcyon" begin moving, begin dragging?

A. I should think about half an hour.

(Testimony of A. S. Cantin.)

Q. Then the "Niihau" moved over directly in the same direction that the "Halcyon" was drifting, was dragging?

A. No, she moved over so that she was ahead of the "Halcyon." She had to make that turn to get ahead of the "Halcyon" to drop her anchor.

Q. Did she drop her anchor there?

A. She dropped her anchor after she got into the position ahead of the "Halcyon."

Q. After that did she make any maneuver?

A. The "Niihau" was trying to get a second anchor out. She was forging ahead, trying to get in a position so she could get the [372] other anchor ahead of her so the two anchors wouldn't get tangled up.

Q. Then she finally dropped the second anchor?

A. Yes, sir.

Q. And that's the position she was in at the time she pulled the "Halcyon" off?

A. No, she backed up. Then after she dropped the second anchor she backed up towards the beach.

Q. That is to tighten up on the chains?

A. They pulled in on the chains and got in the second position of the "Niihau" as I've marked it there.

Q. Now, then, from the time that the "Niihau" was in its position at this last place that you referred to with her chains paid out until the time that she began to pull off the "Halcyon," how long a time elapsed?

A. It didn't seem to me to be more than about

(Testimony of A. S. Cantin.)

five or ten minutes. She had a boat alongside of her. They were putting line into this boat. As the "Niihau" was backing out the boat's crew was getting the line ready and the minute she got into the second position of the "Niihau" this boat shot right off towards the "Halcyon."

Q. Did you see any flags hoisted on the "Halcyon"?

A. The only time I saw a flag hoisted was when she went on the beach.

Q. Was that before or after this boat went out with the line?

A. That was after. The flag was up when the boat started from the steamer.

Q. How long a time elapsed from the time that you first saw the "Halcyon" dragging, that is shortly after seven o'clock until that little boat started out with the line to her?

A. I should think probably about two hours, in that neighborhood.

Q. How long a time after the "Niihau," after you first observed [373] the "Niihau" starting for its second position until she sent out a line? That was about an hour and a half, wasn't it?

A. Well, I didn't get the time on that. Let's see, I didn't notice that.

Q. Well, let me see if I can assist you. You said that it was about a half hour after you saw the "Halcyon" begin to drag until you observed the "Niihau" start for the second position? A. Yes.

Mr. WARREN.—Just a moment. The witness

(Testimony of A. S. Cantin.)

hasn't said that he noticed the "Niihau" at her second position.

Mr. RUSSELL.—Did you testify before that it was a half hour from the time you first saw her dragging until the "Niihau" was at her second position?

A. No, sir, it was about a half an hour elapsed between the first and second position of the "Halcyon."

Q. Didn't you testify that it was about a half hour from the time you first saw the "Halcyon" dragging until the time when you first observed the "Niihau" start for the "Niihau's" second position?

A. Well, it is about thirty or forty minutes.

Q. About thirty or forty minutes?

A. I noticed that time that the "Halcyon" got into that position, then I noticed that this steamer was making that curve to drop her anchors.

Q. How long a time did it take from the time you first observed the "Niihau" start until she dropped her anchors there, that is, how long a time between the time you first saw the "Niihau" start for its second position until she had dropped her anchors down?

A. Until she had dropped her anchors down?

Q. Yes.

A. Must have been three-quarters of an hour or an hour.

Q. And then, how soon after she had her anchors down was it [374] that this boat started, shortly after?

(Testimony of A. S. Cantin.)

A. The boat started out when the "Niihau" got into her second position near the beach there.

Q. About how long after she got into her second position?

A. Oh, it didn't seem to be more than fifteen or twenty minutes, I shouldn't think.

Q. The steamer's boat was alongside the "Niihau" before the "Niihau" had its both anchors down?

A. No, the only thing that I observed the boat was, just before she got into her second position there I could see the nose of the boat on the port side. The boat was on the other side of the steamer to me.

Q. So that the boat was already down when she tightened up on her anchors, the second position?

A. Oh, I don't know how long a time the boat was down.

Q. What are you doing now?

A. I'm working for the Hawaiian Dredging Company.

Mr. RUSSELL.—That's all.

The COURT.—Mr. Cantin, what exactly is the second position as you've described it of the "Niihau," is it at the time she dropped both anchors down or is it after she had paid out her anchors and gone nearer to the "Halcyon"?

A. The second position would be just about the time she left after paying this chain out.

Q. Did you notice how soon after that she commenced to tow?

(Testimony of A. S. Cantin.)

A. Well, it is pretty hard to tell the exact time, it wasn't a very long time.

Q. She probably didn't commence to tow until she got her anchors paid out?

A. No, she didn't start to tow until she got into position, her anchors out and her chain paid out.

Q. Did you notice how long it took for her to get a line aboard the "Halcyon" after the boat started?
[375]

A. I should think about ten or fifteen minutes, it was done very quickly.

Q. Was it breaking at the position where the "Halcyon" was lying at all? Was she in the surf?

A. She was right in the surf when she was on the beach.

Q. Was the surf breaking to windward of her at all on the sea side of her?

A. It didn't seem to be breaking at the bow, it was breaking about amidships as near as I can recollect.
The COURT.—That's all.

Testimony of L. Paulos, for Libellant.

Direct examination of L. PAULOS, a witness on behalf of libellant, called and sworn.

Mr. WARREN.—Q. Mr. Paulos, on January 12th, 13th and 14th of last year, 1914, where were you employed?

A. I was chief engineer aboard the steamer "Nii-hau" belonging to the Inter-Island Steam Navigation Company at Hilo.

Q. And have you any personal knowledge of the

(Testimony of L. Paulos.)

operations of the "Niihau" to assist the schooner "Halcyon"? A. Yes, sir.

Q. Now, can you tell us something of the movements of the "Niihau" that morning?

A. Yes, sir.

Q. Approximately of the time she began her work?

A. We was going out the first place with the "Niihau" that morning, sir, about quarter to five. At four o'clock the purser of the ship, he came off, he was sleeping ashore. He told the captain that the schooner "Halcyon" was ashore on the Waiakea River, in the mouth of the Waiakea River.

Mr. RUSSELL.—Did you hear it?

A. No, he told the captain. The captain told me to get ready with my engines.

Mr. RUSSELL.—I move to strike. [376]

A. Captain came to me four o'clock to get ready with my engines which I was. We started to move to the "Halcyon" between four and half-past four; I got the last full speed bell; he had a line on her. About six-fifty or seven o'clock the line parted. We got the schooner well off the river and over in good anchorage.

Q. Where were you all this time?

A. I was aboard the ship by the engine-room. My assistant was down below and I was down below too on deck once in a while.

Mr. RUSSELL.—I move that that portion of the witness' testimony as to any distance be stricken because it does not appear that he knows of his own

(Testimony of L. Paulos.)

knowledge, of his own observation—

The COURT.—He says he was on deck part of the time.

A. While we was towing we got the full speed bell, half-past four we was towing to six-fifty or seven o'clock, about there the line parted. The schooner was a good deal off the river there and she was over in the bay. We drop our anchors and stand by her and pull our broken line in. She was hung on to her own anchor, I should say about ten minutes until we got the line aboard again, then she started drifting to the beach.

Q. What started to drift?

A. The schooner. The captain told me we start to move around again to give her line. We pick up our anchors and we move around. By the time we move around the schooner was pretty well up to the beach.

Q. How long did it take for you to pick up your anchors?

A. We started to pick up the anchors from about twenty minutes, half-past seven, about quarter to eight; eight o'clock we had the line on the schooner again; the schooner was pretty well up to the beach. We turn around, drop our anchors, paid out [377] seventy-five fathoms of chain, all the chain we had and backed up to the schooner; got our line fast to him and we start to turn about eight o'clock, eight ten full speed ahead again. About I should judge, about quarter to nine, nine o'clock, we had it pretty well off to a safe anchorage and we dropped our an-

(Testimony of L. Paulos.)

chors and held our line to the schooner until seventy-three the next morning, the 14th of January.

Mr. WARREN.—Cross-examine.

Cross-examination.

Mr. RUSSELL.—Q. When you first *start* to tow her, that morning? A. Yes, sir.

Q. That was, say at four-thirty?

A. Four-thirty.

Q. How long did it take to get a line on her, do you remember?

A. It takes from four o'clock to four-thirty.

Q. And then when you started the "Halcyon" wasn't on the rocks, was she at that time?

A. It was pretty dark, I could not see where she was, it was a very dark night.

Q. She responded quite readily to the tow?

A. Sir?

Q. She answered to the tow right away?

A. Yes, she was going with us when we went at full speed ahead.

Q. When you started to tow her at four-thirty in the morning, just as soon as you got your line taut, you went full speed ahead?

A. We got a strain, I took the full speed bell, that was 4:30.

Q. Just as soon as you got the line, did you go ahead? A. Went ahead full speed.

Q. And did the "Halcyon" follow?

A. She followed till about seven o'clock; six-thirty or seven, [378] then we parted our line.

(Testimony of L. Paulos.)

Q. Now, you were proceeding right along from four-thirty up to six-fifty say? A. Yes, sir.

Q. Then, that was the time that the line parted?

A. Yes, sir.

Q. And did you look at the "Halcyon" at that time? A. Yes, sir.

Q. And you saw her drop anchor? A. Sir?

Q. Did you see her drop anchor?

A. The anchor was down; we was pulling her and her anchor too.

Q. How do you know that?

A. Because I could see when the daylight came her chain was down and her anchor was down.

Q. And then did you watch her right along from that time?

A. Well, once in a while I saw what we were doing and I was giving a rest to my assistant down below too.

Q. Were you watching her for any particular purpose?

A. I was watching her, see if towing her any.

Q. What's that?

A. I was watching her to see if we were towing her any or not.

Q. You watched to see whether or not she was standing still?

A. Exactly. She was following us as we were towing.

Q. Were you with the captain at the time?

A. No, sir, captain is up on the bridge, I am down below.

(Testimony of L. Paulos.)

Q. Did you see her start to drift?

A. What do you mean, after we broke our line?

Q. Yes.

A. It was about twenty minutes past seven.

Q. That was perhaps an half hour afterwards?

A. Seven o'clock we broke our line, twenty minutes after.

Q. You said you broke your line at six-fifty.

A. Six-fifty or seven o'clock.

Q. Then about seven-twenty she started to drift again? [379]

A. She started to drift again.

Q. Then the captain gave you certain orders?

A. Captain told me we'll have to give her line again.

Q. How far were you from the "Halcyon" at that time? A. When she started to drift again?

Q. Yes.

A. Well, we was from two hundred to two hundred and fifty feet, of course I haven't got the dimensions exactly but I should judge about that.

Q. The "Niihau" was at anchor at that time?

A. As soon as we broke the line we drop our anchors and we was standing by.

Q. The "Halcyon" was drifting very slowly, wasn't she?

A. She was started to drifting, she was drifting gradually. We picked up our anchors and got her again.

(Testimony of L. Paulos.)

Q. There wasn't any line sent out to her at that time?

A. No, we just picked up the broken line; we had it on board. By the time we got the line aboard the ship she was drifting again.

Q. When the captain said that he'd have to give her another line he didn't send another line?

A. We picked up our anchors and go around there; by the time we got around there she was on the beach.

Q. What would have prevented a line being sent to the "Halcyon" from that position?

The COURT.—From which position?

Mr. RUSSELL.—From the position she was in when you first saw the "Halcyon" dragging.

A. Because we didn't have a line, she was drifting far away from us then.

Q. She wasn't drifting fast?

A. She was drifting pretty gradually. We didn't have a line [380] long enough to reach her from that position. We had to pick up our anchors and go around her.

Q. If you were only two hundred and fifty feet away from her why couldn't you have had line enough to reach her? Was it because she was drifting so fast?

A. We was two hundred and fifty feet when we broke our line. When we got our broken line probably five or six hundred feet away from her, I don't know exactly how much she drifted away. She was pretty near to the beach.

(Testimony of L. Paulos.)

Q. You got around ahead of the "Halcyon"?

A. Yes, we went around and we dropped our anchors and paid out seventy-five or ninety fathoms of chain on both anchors and backed up to the "Halcyon" and gave her another line again. About eight o'clock we started towing her again full speed ahead and about nine or ten we had it out in a safe anchorage and we dropped our anchors and we stayed there until January 14, seven-thirty with a line to the schooner "Halcyon."

Q. How long a time did it take from the time that you left your position at seven-thirty until you dropped anchor the next time?

A. That took about forty minutes, forty to fifty minutes till we had a line on board ready to tow.

Q. Till you had your line aboard where?

A. On the schooner "Halcyon."

Q. It took how long?

A. About fifty minutes, from forty to fifty minutes.

Q. And you say you started to tow the "Halcyon" at what hour?

A. The second time from the beach between eight and ten past eight, between that time.

Q. You're quite sure about that? A. Sir?

Q. You're quite sure about that?

A. Pretty sure, yes.

Q. You haven't your log-book here? [381]

A. No, sir. I didn't put this in the log-book.

Q. You didn't note in the log-book the time that you started towing?

(Testimony of L. Paulos.)

A. From the time we started to assist her to the time we finished I got that in the log-book. I put down working on schooner "Halcyon" from four-thirty to fifteen past nine finished.

Q. So that you're relying about your recollection?

A. Yes, sir.

Q. You say that it was only forty minutes or about forty minutes from the time that you—

A. The second time.

Q. The time that you began to heave up anchor until you started to tow?

A. Yes, sir, about forty or fifty minutes.

Mr. RUSSELL.—That's all. Oh, just a moment. This forty minutes or so was sufficient time was it to heave up the anchor and make the anchor, *the* maneuver over to her position?

A. Between forty and fifty minutes.

Q. It could be done in forty minutes?

A. It could be done, yes.

Mr. RUSSELL.—That's all.

Mr. WARREN.—On behalf of the libellant, your Honor, I rest our case.

Mr. RUSSELL.—The respondent rests also.

I hereby certify that the foregoing is a full, true and correct transcript of my shorthand notes in the above-entitled cause.

O. SOARE,
Official Reporter.

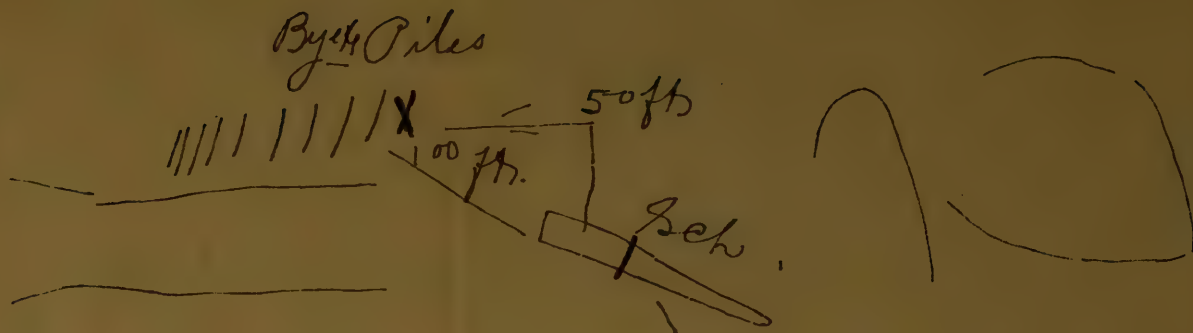
Honolulu, T. H., October 8, 1915.

482 *The American Schooner "Halcyon" et al. vs.*

[Endorsed]: No. 139. (Title of Court and Cause.)
Transcript of Testimony. Filed Dec. 7, 1915. F. L.
Davis, Clerk. By (Sg.) Wm. L. Rosa, Deputy
Clerk. [382]

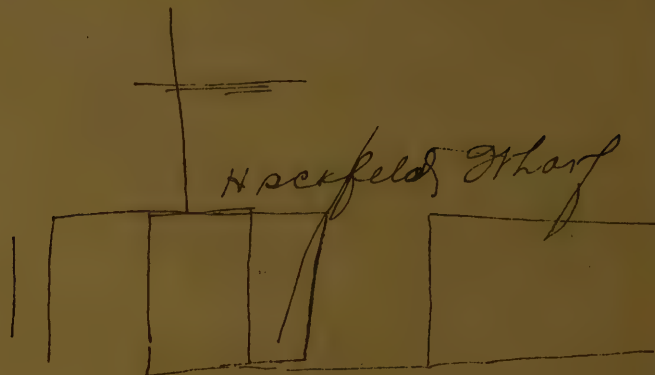
Libellants Ex A

8/17/15



Made by H. P. Morton.

[Endorsed]: 12. #139. In the United States District Court, Territory of Hawaii. Inter-Island Steam Navigation Co., Ltd., etc., vs. The American Schooner "Haleyon," Her Tackle, etc. Libellant's Exhibit "A"—H. P. Morton. Filed Aug. 17, 1915, at — o'clock and — minutes — M. A. E. Murphy, Clerk. By F. J. Davis, Deputy Clerk.



LIBELLANT'S EXHIBIT "B"

[Endorsed]: 15. #139. Territory of Hawaii.
Inter-Island Steam Navigation Co., Ltd., vs. The
American Schooner "Halcyon." Libellant's Ex-
hibit "B"—Captain Bruhn. Filed Aug. 17, 1915, at
— o'clock and — minutes — M. A. E. Mur-
phy, Clerk. By F. J. Davis, Deputy Clerk.

Halcyon
#5.

nihau
#3.

Halcyon
#2

#3
#0

nihau
#4

Halcyon
#4
#3

#20

nihau
#21

#10

Halcyon
#1

Bls

River

R. R. Wharf

Old
Stackfield
Whs.

**Libellant's Exhibit "C"—Surveyor's Report of
Schooner "Halcyon."**

Surveyor's Report on condition of the American Schooner "Halcyon." Survey called for by its Master A. T. H. Olson on Jan. 27th, 1914, to decide the seaworthiness of said Schooner.

Beginning in the For Peak, we found the Breast Hooks drawn from Beams above, showing an open space between End of Breast Hooks and Beams, causing looseness and hard working all around the Bow; also causing the water to enter and found the skin rotten and watersoaked. On working towards the Stern we found the timbers in wake of Channels, both around Bolts holding Chainplates, and also floor timbers to be in such a rotten state, as to enable us to drive a Crowbar clean through them without the slightest exertion.

We also found Kelson and Sister Kelson in as nearly as bad condition as the timbers. The Bolts, fastening Kelson, protruding, rotten wood all around them, thereby loosing all support. The skin in general, but particularly abreast of Chainplates and alongside the Kelson throughout the whole length of Schooner was found in a rotten and watersoaked condition.

On surveying around the upper Deck we found the Mizzen Mast, about 8 feet above the Main Deck, rotted away to the extent of half its Diameter; in other words, 11 Inches from Surface towards Center. The full Diameter of Mizzen Mast being 22 Inches.

The Rail and Stanchions around Quarter Deck and Stern partly broken and Chocks on port Quarter completely gone.

Channelplates on Starboard For and Main Rigging totally gone, on Mizzen partly broken. This state of affair would, in case of ship rolling and pitching, cause considerable slacking and banging of rigging, and thereby endanger the Masts.

Rail and Buffalo, including Chocks, from Night Heads to about 10 feet aft on the Starboard Bow, completely gone; also Gear for holding Bowsprit and Jibboom in a very bad condition, being at present secured by a small chainlashing and turnbuckle.
[348a]

Regarding Mooring Equipment we found only 1 Anchor with 60 fathoms of Chain. The Windlass, being an old-fashioned one, worked with Brakes, which necessitates the use of about 15 fathoms of Chain inboard, leaving only about 45 fathoms available in the water. On looking over the hull outside we found the planking in a poor condition, but more so around Chinplate Bolts and Butts

Concerning the hull below the water line we were not able to form a positive opinion, as the sending down of a Diver was thought unnecessary by the Captain. In view of the fact, that the Schooner "Halcyon," when entering the Hilo harbor, struck the Reef at three different times, lost part of her Keel and made water at the rate of 10 Inches per hour alongside a Wharf in smooth water, we are strongly led to believe, that the hull below the water

line must be in such a bad condition, as to render the vessel unseaworthy. The mean draught of the Schooner, when leaving the coast with a full load of Lumber was 14 feet and 1 inch, at the time of survey 8 feet 4 inches. The Schooners Pumps are of a good make, but as original parts of them have been substituted by inferior material, they consequently do not work to their full capacity. The amount of water made between Soundings, taken at 12:30 P. M. Jan. 28th, was found to be one half of an inch.

The reason for this remarkable small amount of water, the vessel made after discharging her Cargo and during the 24 hours her pumps were sealed, we consider partly due to her smaller draught and in a great measure to the following circumstances.

On Jan. 9th, after the Schooner had been tied up to the wharf, she leaked in such a manner, that in spite of pumping day and night, six feet of water were found in her hold on Saturday Jan. 10th.

This additional weight settled her for several feet in the mud. This mud, the Schooner rested in during four Tides, makes us believe, to have filled up her open seams temporarily.

From Jan. 4th until Jan. 9th, while at sea the "Halcyon" made water at [385] the rate of four and a half inch per hour. On Jan. 9th, after striking the Reef, while entering the Hilo harbor she made water at the rate of 10 inches per hour for three successive days. The following days, as the Cargo was being discharged and the vessel came up, the influx of water decreased gradually.

Capt. Olson, after being advised to have the hull below the water line examined, on Jan. 29th employed a diver for this purpose, the result of which please find in Divers report attached to this document.

As the Diver could not make a thorough examination of the Schooners, bottom, on account of a leaking Diving Suit, we do believe a greater damage existing than stated in his report.

In conclusion we wish to say, that we do not consider the Schooner "Halcyon," in her present condition, fit for a voyage of over 2000 miles to the Pacific Coast.

Hilo, Hawaii, Jan. 29th, 1914.

Surveyors:

(Signed) J. F. WIKANDER.

(Signed) Capt. A. DUVAL.

(Signed) Capt. F. MOSHER. [386]

DIVER'S REPORT.

Jan. 29th, 1914.

Schooner "Halcyon."

Entered water at 2:15 A. M. and worked my way to the rudder on the Starboard side and found a piece of the Keel about 5 or 6 feet gone. This piece is about 6 feet forward of the Rudder.

(Signed) GEORGE HAGGERTY,

Diver.

[Endorsed]: No. 139. (Title of Court and Cause.)
Libellant's Exhibit "C." Filed Aug. 19, 1915.
A. E. Murphy, Clerk. By (Sgd.) F. L. Davis,
Deputy Clerk. [387]

**Libellant's Exhibit "D"—Final Report of Board of
Survey on Schooner "Halcyon."**

Hilo, Hawaii, April 9th, 1914.

FINAL REPORT OF BOARD OF SURVEY.

After being called by Mr. J. W. Russel, attorney for Charles Nelson & Co. to make a final survey of the Schooner "Halcyon," we now find, that the following repairs have been made.

Calking outside in wake of Chain Plates and Butts, where mostly needed. Mizzen Mast fished, and channel plates repaired. Head gear put in a satisfactory condition. Furthermore, we found the lost Anchor and Chain replaced, which makes the mooring equipment complete.

According to Mr. Hartman's Diving report we understand the bottom of the Schooner "Halcyon" to be in a better condition than could have been expected.

We therefore consider the Schooner "Halcyon," in her present state, reasonably safe to undertake the voyage to the Pacific Coast.

Board of Survey:

F. MOSHER.

J. F. WICKANDER.

A. DUVAL. [388]

**REPORT OF DIVER ON SCHOONER
"HALCYON."**

At the request of the Hilo Mercantile Company, Ltd., as agents for the schooner "Halcyon," I have this day examined the bottom of said schooner and beg to report as follows:—

Amidships on port side there is a piece of sheeting 1 inch by 4 inches, about 8' long torn off her keel; on starboard side, a little further aft, a piece about the same size, 3' long is torn off her keel. The shoe is gone from the stern post to mizzen rigging, or about 20 feet. Her rudder and stern post are in perfectly good condition. Her planking with the exception of a few minor scratches have not been touched at all.

My opinion having been asked by Mr. J. W. Russel as attorney for the owners as to the seaworthiness of the vessel, I can say that she is perfectly seaworthy as far as her bottom is concerned.

Respectfully submitted,

(Sgd.) A. HARTMAN.

[Endorsed]: No. 139. (Title of Court and Cause.)
Libellant's Exhibit "D." Filed Aug. 19, 1915.
A. E. Murphy, Clerk. By (Sgd.) F. L. Davis,
Deputy Clerk. [389]

Libellee's Exhibit No. 3—Marine Note of Protest.

MARINE NOTE OF PROTEST.

Territory of Hawaii,
Hilo, County of Hawaii,—ss.

On this fifteenth day of January in the year of Our Lord Nineteen Hundred and fourteen, before me, George H. Williams, a Notary Public in and for the Fourth Judicial Circuit of the Territory of Hawaii, personally appeared J. A. T. Olsen, Master of the Schooner called the "Halcyon," of San Fran-

cisco, of the burden of 278 tons, or thereabout, and on oath saith:

That on to wit, the fourth day of December last past, he sailed in and with the said vessel from the Port of Eureka laden with Lumber, and arrived in said vessel at Hilo, Hawaii, on the ninth day of January, 1914; that at 7 P. M. on Monday evening, January 12th, 1914, being moored at the wharf, the Starboard head line chock carried away in a heavy squall, splitting the rail for a distance of 10 feet; strong breeze freshening to a heavy gale with rain squalls; at 9:30 P. M. the head line carried away at the Pawl bitt, and the vessel dropped down on top of the Schooner "Ka Moi," which was moored astern of us alongside of wharf, carrying away his flying jib boom jumper stay, also smashing our small boat and after taffrail, and breaking the davit fastenings. The starboard anchor was let go, but through poor holding ground the anchor failed to hold, and the vessel was gradually drifting ashore. Our original off shore stern breast line was hauled taut, and another 6" manilla line run out to the same buoy, when the first breast line carried away. 5 A. M. Tuesday January 13th: The flare up torch was then used to attract the attention of the Steamer "Niihau" and she came and anchored close to us, sending a 6" manilla line, which was made fast to the foremast, and she started towing on us, but on attempting to weigh anchor, our port anchor chain parted on the windless, losing the anchor and 35 fathoms of chain.

At 6 A. M. the steamers line carried away, and

the Schooner let go her starboard bower wit 25 fathoms of chain in 18 feet of water in poor holding ground, and at 8 A. M. it was seen that the vessel was drifting ashore fast. At 9 A. M. Tuesday morning the Steamer "Niihau" again got 2 hawsers fast aboard and with the arrival of the Harbor Pilot the vessel was towed out to a safe anchorage in $4\frac{3}{4}$ fathoms of water. At 10 A. M. dropping the Starboard bower, and paying out to 45 fathoms chain at the waters edge, and having a 6" manilla hawser from the Steamer securely fastened on board as a precaution against drifting again.

Weather at this time moderating, clear at times and a heavy ground swell running. At this time the schooner is anchored on the bow anchor and riding easy.

Said Master of the "Halcyon" now enters with me the said Notary, in due form of law, this, his Protest, to serve him as occasion may require, reserving to himself the right to extend the same in time and place convenient.

(Sgd.) J. A. T. OLSEN,
Master Schooner "Halcyon."

Given under my hand and seal and duly sworn to, the day and year first above written.

[Seal] (Sgd.) GEO. H. WILLIAMS,
Notary Public, Fourth Judicial Circuit, Territory of
Hawaii.

[Endorsed]: No. 139. Libellee's Exhibit 3. Capt.
Olson's Protest. [390]

Minutes of Court—December 16, 1915.

(PROCEEDINGS AT DECISION.)

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Thursday, December 16, 1915, Vol. 9, Part 2, Folio 982.

[Title of Court and Cause.]

The within cause being called on this day for decision and none of counsel being present, the Court appointed Wm. L. Stanley as proctor for the libellants and R. W. Breckons, proctor for the libellee. Thereafter the Court read and filed its decision awarding \$2,877.28 to the libellants, to which decision acting proctor for the libellee entered an exception and gave notice of appeal. [391]

[Title of Court and Cause.]

Opinion.

December 16, 1915. [392]

ADMIRALTY: Libel *in rem* for Salvage.

L. J. WARREN (of Smith, Warren, Hemenway & Sutton), for Libellant.

J. W. RUSSELL, for Libellee.

In these proceedings for salvage, the undisputed story is as follows:

The libellee had arrived in the Port of Hilo, with a load of lumber, and had begun to discharge her deck-load at the railroad wharf. On the night of the 12th and 13th of January, 1914, as she was lying a little way off the wharf, moored both to the wharf

and to buoys on the port side, a heavy wind came up from the north and caused her to drift, breaking a line attached to the buoy and colliding with a smaller schooner moored near her stern. Either by blue lights or communication by boat with the steamer "Niihau," belonging to the libellant, she suggested assistance. The steamer immediately raised her anchor and came down the wind, near the libellee, and anchored and sent a tow-line by boat to the libellee, which then had drifted close to the shore, near the mouth of the Wailoa River, the shore on the east side of the mouth of that river being rocky and that on the west side being sandy. The line was connected and the "Niihau" towed the libellee out of this dangerous position to a place out in the bay, beyond the end of the railroad wharf; whereupon the tow-line broke and the libellee, which had already lost one anchor. [393] dropped the other anchor, the "Niihau" also anchoring.

In a few minutes it was evident to the master of the "Niihau" that the libellee was drifting again, this time toward the sandy shore on the west side of the entrance to the Wailoa River. As she approached this shore the "Niihau" changed her position and came close to her, reaching a position a little way to the windward. The master of the schooner, finding himself near to the breakers and still drifting, raised a signal for assistance, and about this time a boat with a tow-line left the "Niihau" and came down the wind on a surf-line from the steamer, and upon reaching her delivered the end of the tow-line, which the crew of the libellee fastened to her

bow; the boat then returning to the steamer and bringing another and larger line which was also fastened to the libellee. The libellee was then pulled out of this dangerous position to a safe place in the harbor, where she anchored, and, her one anchor having proved insufficient, the "Niihau" held on to her during the rest of the day and the succeeding night with a line.

There was apparent effort on the part of the libellee to show that she was in no special danger on either occasion and that the master of the steamer "Niihau" was not prompt in rendering assistance on the second occasion of relief. I am convinced from the evidence that on both occasions the schooner was in great danger of going ashore and of becoming a total loss if she had gone ashore. The wind was blowing a gale, variously estimated from twenty-five to forty miles an hour, the weight and character of the testimony favoring the latter speed. The first aid given was in the darkness of the night, the circumstances creating some danger to the salving steamer, in that she had to proceed between the railroad wharf and unlighted buoys one hundred [394] and fifty or two hundred feet away from the wharf, and anchor and send out her tow-line and proceed into the bay with the libellee in tow. The maneuver was successfully accomplished, yet the tow-line parted after the libellee had reached a comparatively safe place; and there is considerable evidence that the parting of the tow-line was caused by friction with one of the afore-mentioned buoys. After the line was attached to the libellee, the "Niihau" sent

a boat to sound alongside of the libellee, on her port side, where they found the depth of the water to be eighteen feet amidship and twelve feet near the stern, showing the libellee to be almost ashore.

The evidence of the captain of the "Niihau" and the members of his crew shows that as soon as those on board noticed that the libellee was drifting again, after her first relief, they immediately began preparations for assisting her, pulling up her anchors and proceeding toward the drifting schooner and dropping her anchors and letting out her chain until the steamer had reached a favorable position for assisting the schooner, getting out a tow-line, coiling it in the boat, and then sending the boat down the wind on a surf-line, with a tow-line for delivery to the schooner. The evidence of the captain and members of his crew that this boat left the steamer before the signals had been raised by the schooner for relief was positive, it appearing from their testimony that the signals for relief were raised while the boat was on the way and had nearly arrived at the schooner.

A point was made by the libellee's counsel that as, according to the evidence, about two hours elapsed between the time of the breaking of the tow-line at the first relief and the delivery of the end of the tow-line to the schooner on the occasion [395] of the second relief, the "Niihau" must have been doing nothing during a part of this time—had perhaps waited for signals of distress before moving. The fact as shown by the testimony of libellee's witnesses, that the boat from the steamer, carrying the tow-line, started almost immediately after the signals were

raised, shows conclusively that the steamer was thoroughly prepared to act and had been engaged for some part of the two hours in making preparations. We have to consider that when her master noticed the schooner was drifting, fifteen or twenty minutes after the tow-line parted, he had to raise his anchors and steam out to the place where he anchored the second time, finding the right position and dropping both anchors, letting out the chain to an extent which would bring him in a favorable position for assisting the schooner, all of which, according to the testimony, took from twenty minutes to half an hour. He then prepared his boat for conveying the tow-line to the schooner, coiling the tow-line of a six-inch size in the boat, fastening that to a four-inch line for giving it sufficient length for handling, and sending the boat in by a surf-line to the ship, negotiating with his boat's crew, who demurred to going without such surf-line. Such preparations might well have occupied an hour and a half, or more; and the testimony in regard to the time elapsed is of such a general character, merely approximating two hours, that, as a basis for inexcusable delay, it does not appeal to me as being very substantial.

The case presents itself to my mind as one of the most satisfactory cases of salvage on the part of the salvors that has appeared in this court. The agents of the libellant, upon being informed of the danger of the libellee, promptly came to her assistance in the darkness of the night, under circumstances of [396] some danger to its steamer, and removed her from her dangerous position to a safe one in the harbor,

or which would have been a safe one if the libellee had been equipped with her two anchors. As soon as the agents of the libellant noticed that the libellee was drifting again they began preparations for her relief, and continued such preparations until they were ready to send her a tow-line the second time, at which time the libellee was in a dangerous position and, without the relief which was given her, was in prospect of becoming a total loss.

I cannot find from the testimony that there was any neglect or inexcusable delay on the part of the libellant's agents. Having once salved the schooner, they understood, or should have understood, that any neglect by which she might have been lost the second time would lose them all claims for remuneration for her first salvage, unless it should absolutely appear that the second danger and final loss was caused solely by the fault of the libellee. The salving methods were the best, and were carried out with skill and courage and resulted in the entire deliverance of the libellee.

In all these operations, there was according to the evidence, considerable danger to the salving steamer, from the possibility of entangling her propeller with tow-lines, in which case she would be helpless if her anchors should fail to hold from any cause, whether from dragging or the parting of the anchor chains.

There was considerable testimony as to the danger of the cargo in case the schooner had gone ashore and had become a loss. As the weather began to diminish in severity during the following night after the salvage, after a period of perhaps [397]

twelve hours or so, it is hard for the Court to say from the testimony what the situation of the lumber would have been if the schooner had been wrecked. The evidence in the case shows that the schooner was old and in a weak condition from age and decay. It is uncertain that the ship would have been so broken up that the lumber would have escaped into the waves, and yet that might have happened. In any case, the danger to the cargo was considerable. If the ship had gone ashore and held together until the storm subsided, twenty-four hours or more afterwards, the removal of the cargo from the hull to the shore would have been attended with very considerable expense.

In view of the circumstances, as shown by the evidence, that the ship was in the greatest danger and was, to my mind, rescued from total loss, and that the danger to her cargo was considerably less, I think a decree awarding libellant one-half of the value of the schooner, the whole value of which has been admitted to be \$1,500; and one-third of the value of the cargo, which had been admitted to be \$6,381.85, would be reasonable. A decree may be entered for \$750, as one-half of the value of the vessel, and \$2,127.28, as one-third of the value of the cargo, totaling \$2,877.28; all costs to be paid by the libellee.

Honolulu, December 16, 1915.

(Sgd.) SANFORD B. DOLE,
Judge of the United States District Court for the
Territory of Hawaii.

[Endorsed]: No. 139. (Title of Court and Cause.) Decision of Dole, J. On Libel in rem for

Salvage. December 16, 1915. Filed December 16, 1915. F. L. Davis, Clerk. By (Sgd.) Ray B. Rietow, Deputy Clerk. [397A]

Minutes of Court—December 30, 1915.

(PROCEEDINGS AT PRESENTATION OF
FINAL DECREE AND ORDER APPROV-
ING BILL OF COSTS FOR LIBELLANTS.)

(CLEMONS, Presiding Judge.)

From the Minutes of the United States District
Court: Thursday, December 30, 1915, Vol. 9,
Part 2, Folio 996.

[Title of Court and Cause.]

On this day came Mr. L. J. Warren of the firm of Smith, Warren & Sutton, proctors for the above libellants and also came Mr. J. W. Russell, proctor for the libellee herein and this cause was called for further disposition. Thereupon and after due hearing the Court allowed libellant's bill of costs and approved and signed the final Decree.

Thereafter the Court fixed the Bond on Appeal at \$500. [398]

*In the District Court of the United States in and for
the District and Territory of Hawaii.*

IN ADMIRALTY—LAW NO. 139.

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED, a Hawaiian Corporation,
Owner of the Steamer "NIIHAU," for Itself,
the Officers and Crew of said Steamer, and
Other Servants of said Owner,

Libellant,

vs.

The American Schooner "HALCYON," Her Tackle,
Apparel, Machinery, Boats, Furniture, Appur-
tenances, Cargo and Freight Money,

Respondent,

J. A. T. OLSEN,

Master and Claimant.

Decree.

This cause having come on regularly to be heard before the Honorable Sanford B. Dole as a Judge of this court upon the pleadings and evidence adduced by the respective parties, and said cause having been submitted to the said Sanford B. Dole as such Judge of this court for determination;

And the said Sanford B. Dole as such Judge of this court having duly considered the same and on the 16th day of December 1915, rendered and filed his decision thereon, and thereby having determined that the services rendered to the above-named respondent The American schooner "Halcyon," her tackle, apparel, [399] machinery, boats, furniture, appur-

tenances, cargo, and freight money, by the libellant, Inter-Island Steam Navigation Company, Limited, and the officers and crew of its steamer "Niihau" above named, and other servants of said libellant, were salvage services, entitled to compensation as in said decision and this decree provided:

NOW, THEREFORE, upon motion of L. J. Warren, Esq., of Messrs. Smith, Warren & Sutton, proctors for said libellant, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the libellant, Inter-Island Steam Navigation Company, Limited, for itself and the officers and crew of said steamer "Niihau" and other servants of said libellant, do have and recover from the said respondent the American schooner "Halcyon," her tackle, apparel, machinery, boats, furniture, appurtenances, cargo, and freight money, and that said respondent pay unto the said libellant accordingly, the sum of TWO THOUSAND EIGHT HUNDRED SEVENTY-SEVEN AND 28/100 DOLLARS (\$2,877.28), in lawful money of the United States, with interest thereon from the date hereof until paid at the rate of six per cent per annum, for its own use and in trust for the officers and crew of said steamer "Niihau" and other servants of said libellant, to be apportioned between said libellant and its said officers, crew and other servants as shall by this Court hereafter be directed.

It is hereby ORDERED, ADJUDGED AND DECREED that all costs herein be taxed against the respondent, and that said libellant Inter-Island Steam Navigation Company, Limited, have and re-

cover from the respondent, and that said respondent pay to said libellant for its sole account, the full amount of the costs and disbursements of the libellant herein, hereby taxed at \$305.25. [400]

And it further appearing to this Court that the said American schooner "Halcyon," and her tackle, apparell, machinery, boats, furniture, appurtenances, cargo, and freight money, have been released to the above named J. A. T. Olsen, Master and Claimant in this cause, upon a stipulation in the sum of Four Thousand Dollars (\$4000), dated the 20th day of January, 1914, and signed by the said J. A. T. Olsen on behalf of the owners of said schooner and the shippers of her cargo with the National Surety Company as surety, conditioned that said principal and surety shall abide by and perform the decree of this court, it is hereby further ORDERED, ADJUDGED AND DECREED, that unless this decree (Including costs) shall be satisfied, or proceedings thereon stayed by appeal, within ten days after notice given by the proctors for the libellant to J. W. Russell, Esq., proctor for said respondent and said claimant, of the entry of this decree and the taxation of costs herein, the said surety, National Surety Company, pay to the said libellant the said sum of Two Thousand Eight Hundred and Seventy-seven and 28/100 Dollars (\$2,877.28), hereinabove awarded as aforesaid, with the interest thereon to date of payment, and the libellant's costs taxed as aforesaid, or show cause within five days after the expiration of said period of ten days why execution should not issue against it, its lands, goods and chattels, accord-

ing to said stipulation, to satisfy this decree. In the event of proceedings hereunder being stayed by appeal, the obligation of said surety under said stipulation shall be suspended, to satisfy such decree as shall or may be finally made herein upon mandate on appeal. And upon payment of said sum of \$2,877.28 and costs (or as may be directed by any final decree upon mandate in case of an appeal), the said surety shall stand released from [401] further liability on account of the said stipulation.

Dated at Honolulu, T. H., December 30, 1915.

(Sgd.) CHAS. F. CLEMONS,

Judge of the United States District Court for the Territory of Hawaii.

Approved as to form, and as to signing by Judge Clemons.

(Sgd.) J. W. RUSSELL,

Proctor for Claimant.

(Sgd.) L. J. WARREN,

Proctor for Libellant.

[Endorsed]: No. 139. (Title of Court and Cause.) Decree. Entered in J. & D. Book 2 at Folios 660, 661. Filed December 30, 1915. (Sgd.) F. L. Davis, Clerk. [402]

[Title of Court and Cause.]

Notice of Entry of Decree.

To the Respondent in the above-entitled cause and J. A. T. Olsen, Esq., Master and Claimant, and to J. W. Russell, Esq., Proctor for said Claimant:

You will please take notice that on this 30th day

of December, 1915, a decree was made, entered and filed in the above-entitled cause in the form of the copy thereof hereunto annexed and by reference made a part hereof.

Dated Honolulu, T. H., December 30th, 1915.

(Sgd.) SMITH, WARREN & SUTTON,
Proctors for Libellant.

Receipt of a copy of the above notice and copy of decree is hereby acknowledged this 30th day of December, 1915.

(Sgd.) J. W. RUSSELL,
Proctor for Claimant. [403]

*In the District Court of the United States in and
for the District and Territory of Hawaii.*

IN ADMIRALTY—LAW NO. 139.

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED, a Hawaiian Corporation,
Owner of the Steamer "NIIHAU," for Itself,
the Officers and Crew of Said Steamer, and
Other Servants of Said Owner,
Libellant,

vs.

THE AMERICAN SCHOONER, "HALCYON,"
Her Tackle, Apparel, Machinery, Boats,
Furniture, Appurtenances, Cargo and Freight
Money,
Respondent,

J. A. T. OLSEN,

Master and Claimant.

Decree.

This cause having come on regularly to be heard before the Honorable Sanford B. Dole as a Judge of

this court upon the pleadings and evidence adduced by the respective parties, and said cause having been submitted to the said Sanford B. Dole as such Judge of this court for determination;

And the said Sanford B. Dole as such Judge of this court having duly considered the same and on the 16th day of December, 1915, rendered and filed his decision thereon, and thereby having determined that the services rendered to the above-named respondent the American schooner "Halcyon," her tackle, apparel, [404] machinery, boats, furniture, appurtenances, cargo, and freight money, by the libellant, Inter-Island Steam Navigation Company, Limited, and the officers and crew of its steamer "Niihau" above named, and other servants of said libellant, were salvage services, entitled to compensation as in said decision and this decree provided;

NOW, THEREFORE, upon motion of L. J. Warren, Esq., of Messrs. Smith, Warren & Sutton, procutors for said libellant, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the libellant, Inter-Island Steam Navigation Company, Limited, for itself and the officers and crew of said steamer "Niihau" and other servants of said libellant, do have and recover from the said respondent the American schooner "Halcyon," her tackle, apparel, machinery, boats, furniture, appurtenances, cargo, and freight money, and that said respondent pay unto the said libellant accordingly, the sum of TWO THOUSAND EIGHT HUNDRED SEVENTY-SEVEN AND 28/100 DOLLARS (\$2,877.28), in

lawful money of the United States, with interest thereon from the date hereof until paid at the rate of six per cent per annum, for its own use and in trust for the officers and crew of said steamer "Nii-hau" and other servants of said libellant, to be apportioned between said libellant and its said officers, crew and other servants as shall by this court hereafter be directed.

It is hereby further ORDERED, ADJUDGED AND DECREED that all costs herein be taxed against the respondent, and that said libellant Inter-Island Steam Navigation Company, Limited, have and recover from the respondent, and that said respondent pay to said libellant for its sole account, the full amount of the costs and disbursements of the libellant herein, hereby taxed at \$305.25. [405]

And it further appearing to this Court that the said American schooner "Halcyon," and her tackle, apparel, machinery, boats, furniture, appurtenances, cargo, and freight money, have been released to the above-named J. A. T. Olsen, Master and Claimant in this cause, upon a stipulation in the sum of Four Thousand Dollars (\$4,000), dated the 20th day of January, 1914, and signed by the said J. A. T. Olsen, on behalf of the owners of said schooner and the shippers of her cargo with the National Surety Company as surety, conditioned that said principal and surety shall abide by and perform the decree of this court, it is hereby further ORDERED, ADJUDGED AND DECREED, that unless this decree (including costs) shall be satisfied, or proceedings thereon stayed by appeal, within ten days after no-

tice given by the proctors for the libellant to J. W. Russell, Esq., proctor for said respondent and said claimant, of the entry of this decree and the taxation of costs herein, the said surety, National Surety Company, pay to the said libellant the said sum of Two Thousand Eight Hundred Seventy-seven and 28/100 Dollars (\$2,877.28), hereinabove awarded as aforesaid, with the interest thereon to date of payment, and the libellant's costs taxed as aforesaid, or show cause within five days after the expiration of said period of ten days why execution should not issue against it, its lands, goods and chattels, according to said stipulation, to satisfy this decree. In the event of proceedings hereunder being stayed by appeal, the obligation of said surety under said stipulation shall be suspended, to satisfy such decree as shall or may be finally made herein upon mandate on appeal. And upon payment of said sum of \$2,877.28 and costs (or as may be directed by any final decree upon mandate in case of an appeal), the said surety shall stand released from [406] further liability on account of the said stipulation.

Dated at Honolulu, T. H., December 30, 1915.

(Sgd.) CHAS. F. CLEMONS,
Judge of the United States District Court for the
Territory of Hawaii.

Approved as to form, and as to signing by Judge
Clemons.

(Sgd.) J. W. RUSSELL,
Proctor for Claimant.

(Sgd.) L. J. WARREN,
Proctor for Libellant.

[Endorsed]: No. 139. (Title of Court and Cause.)
Notice of Entry of Decree. Filed Dec. 31, 1915.
F. L. Davis, Clerk. By (Sgd.) Ray B. Rietow,
Deputy Clerk. [407]

[Title of Court and Cause.]

Notice of Appeal.

To the Inter-Island Steam Navigation Company,
Limited, a Hawaiian Corporation, Libellant, in
the Above-entitled Cause, and to Messrs. Smith,
Warren & Sutton, Its Proctors:

You and each of you are hereby notified that the
American schooner "Halcyon," respondents in the
above-entitled cause, and J. A. T. Olsen, its master
and claimant, intend to and hereby do appeal to the
United States Circuit Court of Appeals for the
Ninth Circuit from the final order and decree of the
District Court of the United States in and for the
District and Territory of Hawaii, made and entered
in the above-entitled cause on the 30th day of De-
cember, 1915; and you are hereby further notified
that said respondent and claimant intend to intro-
duce new proofs in said appeal.

Honolulu, Hawaii, December 31st, 1915.

(Sgd.) J. W. RUSSELL,

Proctor for Respondent and Claimant. [408]

[Endorsed]: No. 139. (Title of Court and Cause.)
Notice of Appeal. Service of a Copy of the Within
Notice of Appeal on December 31st, 1915, is hereby
admitted. Smith, Warren & Sutton. By (Sgd.)

E. W. Sutton. Filed December 31st, 1915. F. L. Davis, Clerk. By (Sgd.) Ray B. Rietow. [409]

[Title of Court and Cause.]

Bond for Costs on Appeal.

KNOW ALL MEN BY THESE PRESENTS, that we, J. A. T. Olsen, as principal, and E. F. Nichols, as surety, are held and firmly bound unto the Inter-Island Steam Navigation Company, Limited, a corporation, in the sum of two hundred and fifty dollars (\$250), to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 3d day of January, 1916.

WHEREAS, a decree was lately rendered and entered in the above-entitled court and cause in favor of the said Inter-Island Steam Navigation Company, Limited, and against the above-named respondent and the said J. A. T. Olsen, as master [410] and claimant, and the said respondent, and said claimant having filed in the aforesaid court their notice of appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit;

NOW, the condition of the above obligation is such that if the said appellants shall prosecute the said appeal to effect, and shall pay all costs that may be awarded to the appellee, if such appeal is not sustained, then this obligation shall be void, otherwise

to remain in full force and effect.

J. A. T. OLSEN. (Seal)

By (Sgd.) J. W. RUSSELL,
His Agent and Attorney.
(Sgd.) E. F. NICHOLS,
Surety.

Approved as to form.

(Sgd.) SMITH, WARREN & SUTTON,
Proctors for Appellee.

To the Inter-Island Steam Navigation Company,
Limited, Libellant Herein, and to Messrs. Smith,
Warren & Sutton, Its Proctors:

Please take notice that the foregoing is a copy of
the bond for costs on appeal filed herein, and that the
address of E. F. Nichols, the surety therein men-
tioned is the City of Hilo, County and Territory of
Hawaii.

(Sgd.) J. W. RUSSELL,
Proctor for Appellants.

[Endorsed] No. 139. (Title of Court and Cause.)
Bond for Costs on Appeal. Filed Jan. 4, 1916.
(Sgd.) F. L. Davis, Clerk. [411]

[Title of Court and Cause.]

Assignment of Errors.

Now come the American schooner "Halcyon,"
libelee, and J. A. T. Olsen, master and claimant, ap-
pellants in the above-entitled cause, and say that
in the record, opinion, decision, decree and proceed-
ings in the above-entitled matter in the above-en-
titled court there is manifest and material error, and

said appellants now make, file and present the following assignment of errors upon which they rely, to wit:

1.

That the award of \$2,877.28 in favor of libellant was and is not warranted by the evidence and was and is excessive and erroneous. [412]

2.

That the Court erred in holding and deciding that the schooner "Halcyon" was in a dangerous position at the time immediately prior to the first tow by the steamer "Niihau," and that the position from which the said steamer so towed out the said schooner was a dangerous one.

3.

That the Court erred in holding and deciding that upon said occasion of the first tow the said schooner "Halcyon" was in great danger of going ashore, and in not holding that on said occasion, by reason of the said schooner being held to the buoy and by its anchors and not drifting, the said schooner was in no danger of so going ashore.

4.

That the Court erred in holding and deciding that the steamer "Niihau" was subjected to danger while engaged in the operations attending either the first or second tow of the schooner "Halcyon," and said steamer "Niihua" ran any risks while so engaged.

5.

That the Court erred in holding and deciding that the salving methods of the steamer "Niihau" were the best, and were carried out with skill and courage

and resulted in the entire deliverance of the libellee, and in not holding that the necessity for the salving of the libellee after the said schooner commenced drifting from the position to which the schooner was first towed arose from and was the result of the carelessness and negligence of the steamer "Niihau" in leaving the said schooner in such a dangerous position.

6.

That the Court erred in holding and deciding that the point to which the said schooner was first towed by the said [413] steamer was a "comparatively safe place," and in not holding that said place afforded an unsafe and dangerous position to anchor said schooner.

7.

That the Court erred in failing to find gross negligence and lack of skill on the part of the libellant and of its agents in failing and omitting to tow the said schooner to a point farther out in the bay, upon the occasion of the first tow, than to the point at which the said schooner was left, and in failing and omitting to stand by until the schooner was safely anchored.

8.

That the Court erred in failing to find gross negligence and carelessness on the part of the libellant and its agents in not observing that the said "Halcyon" was drifting from the point to which the said schooner was first towed until after twenty minutes had elapsed from the time the said schooner first commenced to so drift.

9.

That the Court erred in holding and deciding that the steamer "Niihau" was prompt in rendering assistance to the said schooner on the occasion of the second tow, and in not holding that the said steamer was not prompt in rendering such assistance and delayed purposely in order to enhance libellant's claim to a salvage award.

10.

That the Court erred in not forfeiting any award to which libellant would have been otherwise entitled, by reason of the said gross negligence and carelessness of the steamer "Niihau" and its officers and crew, and their said misconduct.

11.

That the Court erred in holding and deciding that the services [414] performed by the libellant were of a salvage nature and character, and in failing to hold that such services were performed solely pursuant to a contract for the towage of the said schooner.

12.

That the Court erred in rendering decision in this cause before the final submission of briefs and argument, and before the expiration of the time granted to counsel for the filing of briefs and argument.

13.

That the Court erred in making, rendering and entering a final decree in this cause in favor of libellant, and in not making, rendering and entering a final decree in favor of the claimant.

In order that the foregoing assignment of errors

may be and appear of record, said appellants herein file and present the same to said court, and pray such disposition to be made thereof as is in accordance with law and the statutes of the United States in such case made and provided, and said appellants pray the reversal of the above-mentioned decree, and that such judgment be entered as ought to have been rendered by the District Court of the United States for the Territory of Hawaii.

Dated at Hilo, Hawaii, January 25th, 1916.

THE AMERICAN SCHOONER "HAL-
CYON," and J. A. T. OLSEN,

Master and Claimant,

Appellants.

By J. W. RUSSELL,

Their Attorney and Proctor. [415]

[Endorsed]: 139. In the United States District Court in and for the District and Territory of Hawaii. In Admiralty. Inter-Island Steam Navigation Company, Limited, Libellant, v. The American Schooner "Halecyon," Respondent, J. A. T. Olsen, Master and Claimant. Assignment of Errors. Filed Jan. 29, 1916. F. L. Davis, Clerk. By ———, Deputy Clerk.

Due service of a copy of the within Assignment of Errors this day is admitted.

Dated Jan. 29, 1916.

SMITH, WARREN & SUTTON,

By E. W. SUTTON,

Proctors for Libellant.

[Title of Court and Cause.]

Stipulation and Order Extending Time to and Including March 16, 1916, to File Apostles on Appeal.

IT IS HEREBY STIPULATED by and between the parties to the above-entitled cause that the respondent and claimant herein may have to and including March 15th, 1916, within which to file in the United States Circuit Court of Appeals for the Ninth Circuit, their certified apostles on appeal herein.

Dated January 22d, 1916.

(Sgd.) SMITH, WARREN & SUTTON,
Proctors for Libellant.

(Sgd.) J. W. RUSSELL,
Proctor for Respondent and Claimant.

The foregoing Stipulation is hereby approved.

(Sgd.) CHAS. F. CLEMONS,
Judge of the U. S. District Court. [416]

[Endorsed]: No. 139. (Title of Court and Cause.)
Stipulation Extending Time to File Apostles. Filed
Jan. 25, 1916, at 2 o'clock and 56 minutes P. M.
F. L. Davis, Clerk. By (Sgd.) Ray B. Rietow,
Deputy Clerk. [417]

[Title of Court and Cause.]

Certificate of Clerk U. S. District Court to Apostles on Appeal.

I, George R. Clark, Clerk of the United States District Court for the District and Territory of Hawaii, do hereby certify that the foregoing pages numbered from 1 to 420, inclusive, is a true and com-

[Title of Court and Cause.]

**Order Extending Time to and Including February
20, 1916, to File Apostles on Appeal.**

IT IS HEREBY ORDERED that the respondent, claimant and appellants herein may have to and including the 20th day of February, 1916, within which to procure to be filed in the United States Circuit Court of Appeals, for the Ninth Circuit, the Apostles on Appeal certified by the clerk of the above-named Court.

Dated January 22, 1916.

WM. W. MORROW,
KELLY,

United States Circuit Judge.

[Endorsed]: Law No. 139. District Court of the United States for the District and Territory of Hawaii, Division ——. Inter-Island Steam Navigation Co., Ltd., a Hawaiian Corporation, etc., Libellant, vs. The Amer. Sch. "Halcyon," etc. J. A. T. Olsen, Master and Claimant. Order Extending Time to File Apostles on Appeal.

No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to ——— to File Record thereof and to Docket Case. Filed Jan. 22, 1916. F. D. Monckton, Clerk.

[Title of Court and Cause.]

**Order Extending Time to and Including March 1,
1916, to File Apostles on Appeal.**

IT IS HEREBY ORDERED that the respondent, claimant and appellants herein, may have to and including the 1st day of March, 1916, within which to procure to be filed in the United States Circuit Court of Appeals, for the Ninth Circuit, the Apostles on Appeal certified by the clerk of the above-named court.

Dated February 21, 1916.

WM. W. MORROW,
United States Circuit Judge.

[Endorsed]: Law No. 139. In the District Court of the United States in and for the District of Hawaii. In Admiralty. Inter-Island Steam Navigation Company, Limited, a Corporation, Owner of the Steamer "Niihau," for Itself, the Officers, etc., Libellant, vs. Amer. Sch. "Halecyon," etc., Respondent. J. A. T. Olsen, Master and Claimant. Order Extending Time to File Apostles on Appeal. Filed Feb. 21, 1916. F. D. Monckton, Clerk.

[Title of Court and Cause.]

**Order Extending Time to and Including March 15,
1916, to File Apostles on Appeal.**

IT IS HEREBY ORDERED that the respondent, claimant and appellants herein, may have to and including the 15th day of March, 1916, within which

to procure to be filed in the United States Circuit Court of Appeals, for the Ninth Circuit, the Apostles on Appeal certified by the clerk of the above-named court.

Dated March 11, 1916.

WM. W. MORROW,
United States Circuit Judge.

[Endorsed]: Law No. 139. District Court of the United States for the District and Territory of Hawaii, Division ——. Inter-Island Steam Navigation Company, Limited, a Hawaiian Corporation, etc., Libelant, vs. The Amer. Sch. "Halcyon," etc., Respondent. J. A. T. Olsen, Master and Claimant. Order Extending Time Within Which to Serve and File Apostles on Appeal. Filed Mar. 2, 1916. F. D. Monekton, Clerk.

[Title of Court and Cause.]

**Order Extending Time to and Including March 25,
1916, to File Apostles on Appeal.**

IT IS HEREBY ORDERED that the respondent, claimant and appellants herein, may have to and including the 25th day of March, 1916, within which to procure to be filed in the United States Circuit Court of Appeals, for the Ninth Circuit, the Apostles on Appeal certified by the clerk of the above-named court.

Dated March 15, 1916.

WM. W. MORROW,
United States Circuit Judge.

[Endorsed]: No. ——. District Court of the United States, in and for the District and Territory of Hawaii, Division ——. Inter-Island Steam Navigation Company, Limited, a Hawaiian Corporation, etc., Libelant, vs. Am. Str. "Haleyon," etc. J. A. T. Olsen, Claimant. Order Extending Time Within Which to File Apostles on Appeal. Filed Mar. 15, 1916. F. D. Monckton, Clerk.

[Title of Court and Cause.]

Order Extending Time to and Including April 5, 1916, to File Apostles on Appeal.

IT IS HEREBY ORDERED that the respondent, claimant and appellants herein, may have to and including the 5th day of April, 1916, within which to procure to be filed in the United States Circuit Court of Appeals, for the Ninth Circuit, the Apostles on Appeal certified by the clerk of the above-named court.

Dated March 25, 1916.

WM. W. MORROW,
United States Circuit Judge.

[Endorsed]: Law No. 139. In the District Court of the United States in and for the District and Territory of Hawaii. Inter-Island Steam Navigation Company, Limited, a Hawaiian Corporation, Owner of the Str. "Niihau," etc., Libelant, vs. The Amer. Sch. "Haleyon," etc., Respondent. Order Extending Time to File Apostles on Appeal. Filed Mar. 25, 1916. F. D. Monckton, Clerk.

[Title of Court and Cause.]

Order Extending Time to and Including May 1, 1916, to File Apostles on Appeal.

IT IS HEREBY ORDERED that the respondent, claimant and appellants herein, may have to and including the 1st day of May, 1916, within which to procure to be filed in the United States Circuit Court of Appeals, for the Ninth Circuit, the Apostles on Appeal certified by the clerk of the above-named court.

Dated April 5th, 1916.

WM. W. MORROW,
United States Circuit Judge.

[Endorsed]: Law No. 139. In the District Court of the United States in and for the District and Territory of Hawaii. In Admiralty. Inter-Island Steam Navigation Company, Limited, etc., Libellant, vs. Am. Sch. "Halcyon," etc. J. A. T. Olsen, Master and Claimant. Order Extending Time to File Apostles on Appeal. Filed Apr. 5, 1916. F. D. Monckton, Clerk.

[Title of Court and Cause.]

Order Extending Time to and Including May 6, 1916, to File Apostles on Appeal.

IT IS HEREBY ORDERED that the respondent, claimant and appellants herein, may have to and including the 6th day of May, 1916, within which to procure to be filed in the United States Circuit Court of Appeals, for the Ninth Circuit, the Apos-

tles on Appeal certified by the clerk of the above-named court.

Dated May 1st, 1916.

WM. W. MORROW,
United States Circuit Judge.

[Endorsed]: Law No. 139. In the District Court of the United States in and for the District and Territory of Hawaii. In Admiralty. Inter-Island Steam Navigation Company, Limited, a Corp., etc., Libellant, vs. Amer. Str. "Halcyon," etc., Respondent. Order Extending Time to File Apostles on Appeal. Filed May 3, 1916. F. D. Monckton, Clerk.

[Title of Court and Cause.]

Order Extending Time to and Including May 15, 1916, to File Apostles on Appeal.

IT IS HEREBY ORDERED that the respondent, claimant and appellants herein, may have to and including the 15th day of May, 1916, within which to procure to be filed in the United States Circuit Court of Appeals, for the Ninth Circuit, the Apostles on Appeal certified by the clerk of the above-named court.

Dated May 6, 1916.

WM. W. MORROW,
United States Circuit Judge.

[Endorsed]: Law No. 139. In the District Court of the United States in and for the District and Territory of Hawaii. In Admiralty. Inter-Island Steam Navigation Co., Limited, a Hawaiian Corpo-

ration, etc., Libelant, vs. The Amer. Sch. "Halcyon," etc., Respondent. J. A. T. Olsen, Claimant. Order Extending Time to File Apostles on Appeal. Filed May 6, 1916. F. D. Monckton, Clerk.

[Title of Court and Cause.]

Order Extending Time to and Including May 17, 1916, to File Apostles on Appeal.

IT IS HEREBY ORDERED that the respondent, claimant and appellants herein, may have to and including the 17th day of May, 1916, within which to procure to be filed in the United States Circuit Court of Appeals, for the Ninth Circuit, the Apostles on Appeal certified by the clerk of the above-named court.

Dated May 15, 1916.

WM. W. MORROW,
United States Circuit Judge.

[Endorsed]: Law No. 139. In the District Court of the United States in and for the District and Territory of Hawaii. Inter-Island Steam Navigation Company, Limited, etc., Libelant, vs. The Am. Sch. "Halcyon," etc., Respondent. J. A. T. Olsen, Master and Claimant. Order Extending Time to File Apostles on Appeal. Order Under Rule 16 Enlarging Time to May 17th, 1916, to File Record Thereof and to Docket Case. Filed May 15, 1916. F. D. Monckton, Clerk.

[Title of Court and Cause.]

Order Extending Time to and Including June 15, 1916, to File Apostles on Appeal.

IT IS HEREBY ORDERED that the respondent, claimant and appellants herein, may have to and including the 15th day of June, 1916, within which to procure to be filed in the United States Circuit Court of Appeals, for the Ninth Circuit, the Apostles on Appeal certified by the clerk of the above-named court.

Dated May 17, 1916.

WM. B. GILBERT,
United States Circuit Judge.

[Endorsed]: Law No. 139. In the District Court of the United States in and for the District and Territory of Hawaii. Inter-Island Steam Navigation Company, Limited, a Hawaiian Corporation, etc., Libelant, vs. The Amer. Sch. "Halcyon," etc., Respondent. Order Extending Time to File Apostles on Appeal. Filed May 17, 1916. F. D. Monckton, Clerk.

[Title of Court and Cause.]

Order Extending Time to and Including August 15, 1916, to File Apostles on Appeal.

IT IS HEREBY ORDERED, That the respondent, claimant and appellants herein, may have to and including the 15th day of August, 1916, within which to procure to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, the

Apostles on Appeal certified by the clerk of the above-named court.

Dated June 15, 1916.

WM. H. HUNT,
United States Circuit Judge.

[Endorsed]: Law No. 139. In the United States District Court in and for the District and Territory of Hawaii. In Admiralty. Inter-Island Steam Navigation Co., a Corporation, etc., Libelant, vs. The Amer. Str. "Halcyon," etc., Respondent, J. A. T. Olsen, Master and Claimant. Order Extending Time to File Apostles on Appeal. Filed Jun. 15, 1916. F. D. Monckton, Clerk.

No. 2830. United States Circuit Court of Appeals for the Ninth Circuit. Eleven Orders Under Rule 16 Enlarging Time to Aug. 15, 1916, to File Record Thereof and to Docket Case. Refiled Jul. 19, 1916. F. D. Monckton, Clerk.

[Title of Court and Cause.]

Designation of Parts of Record to be Printed.

To Inter-Island Steam Navigation Company, Limited, a Hawaiian Corporation, Owner of the Steamer "Niihau," for Itself, the Officers and Crew of Said Steamer, and Other Servants of Said Owner, and to Messrs. Smith, Warren & Sutton, Its Proctors:

YOU ARE HEREBY NOTIFIED, that the appellant herein intends to rely on each and all of the Assignments of Error in said record contained, and considers all the said record necessary for the con-

sideration thereof, with the exception of the following, which appellant does not consider necessary to be printed in said record, and desires to have omitted from the same:

1. Extended Title of Court and Cause in all cases except on first page and first pleading in the lower court, and the decree, and insert in lieu of caption the words, "Title of Court and Cause."

2. All orders extending time to file Apostles on Appeal filed with the Clerk's office of the Circuit Court of Appeals at San Francisco, California, with the exception of that order dated June 15, 1916, and signed by William H. Hunt, Judge.

3. All orders extending time to file Apostles on Appeal, etc., and filed at Honolulu, Territory of Hawaii, with the exception of that of July 10, 1916, signed by Judge Clemons.

4. Bond for costs on appeal, filed January 4, 1916, and appearing on page 410 of the record from the lower court.

5. Stipulation extending time to file Apostles on Appeal dated January 22, 1916, and filed January 25, 1916.

6. Praeipe for Transcript on Appeal, filed January 29, 1916.

Dated San Francisco, August 1, 1916.

NATHAN H. FRANK,
IRVING H. FRANK,

Proctors for Appellant.

Copy of the foregoing Designation of Parts of Record to be printed sent by registered mail to

Messrs. Smith, Warren & Sutton, Proctors for Appellee, addressed as follows: Messrs. Smith, Warren & Sutton, Attorneys at Law, Bank of Hawaii Building, Honolulu, T. H.,—on the first day of August, 1916, there being no proctors of record representing the appellee at San Francisco, California.

Dated San Francisco, Cal., August 1, 1916.

NATHAN H. FRANK,
IRVING H. FRANK,
By IRVING H. FRANK,
Proctors for Appellant.

[Endorsed]: No. 2830. In the United States Circuit Court of Appeals in and for the Ninth Circuit. The American Schooner "Halcyon," Her Tackle, Apparel, Machinery, etc., Appellant, vs. Inter-Island Steam Navigation Company, Limited, a Hawaiian Corporation, Owner of the Steamer "Niihau," etc., Appellee. Designation of Parts of Record to be Printed. Filed Aug. 2, 1916. F. D. Monckton, Clerk.

[Title of Court and Cause.]

Praeipie Re Designation of Parts of Record to be Printed.

To the Clerk of the said Court:

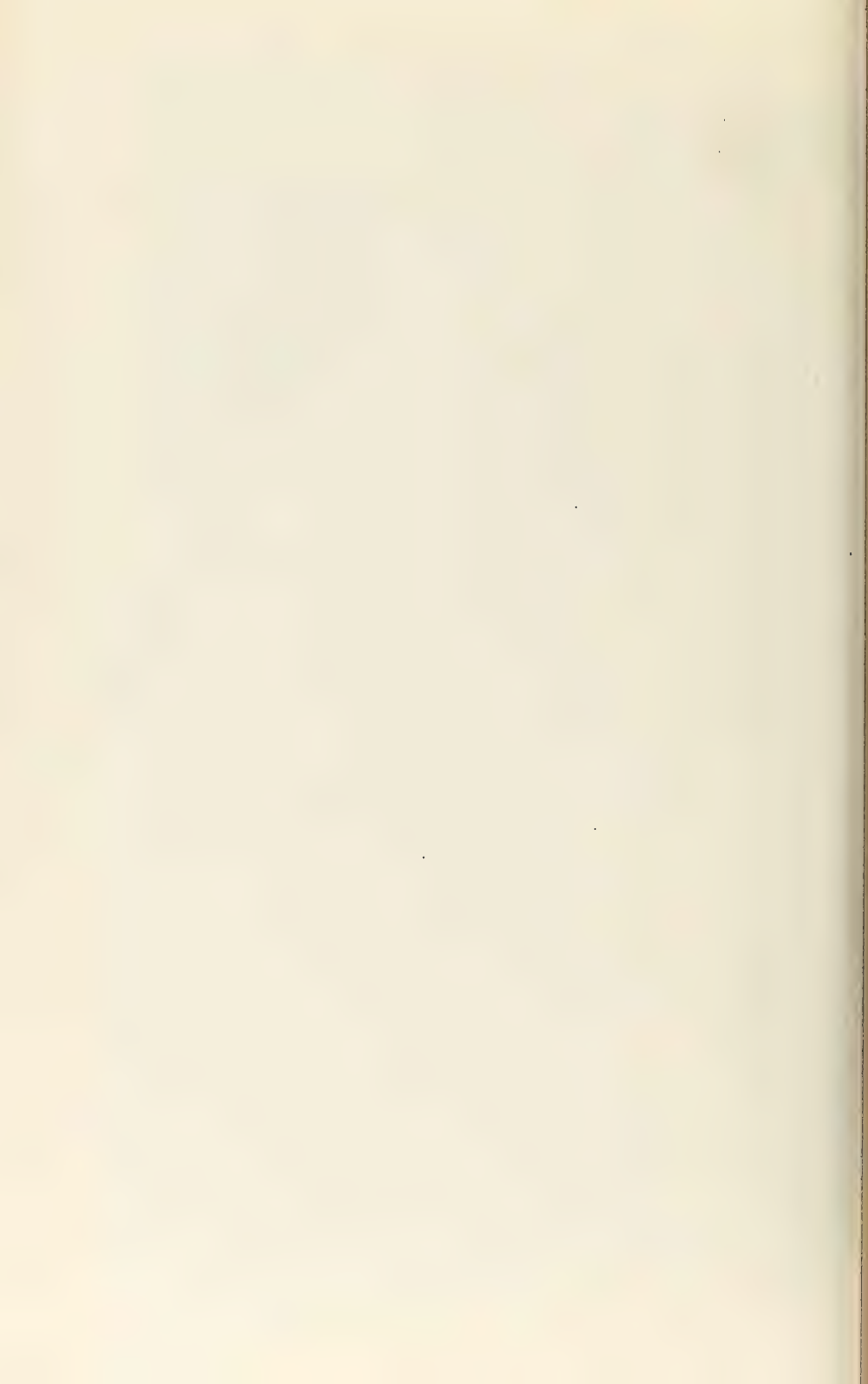
Sir: Please to disregard Designation of Parts of Records to be Printed, dated Aug. 1, 1916, with the exception of sections numbered 1 and 6 thereof. You will accordingly print that part of the record mentioned in sections 2, 3, 4, 5, of said designation

and omit from the printed record that part mentioned in sections 1 and 6 thereof.

Sept. 5, 1916.

NATHAN H. FRANK,
IRVING H. FRANK,
Proctors for Appellants.

[Endorsed]: No. 2830. United States Circuit Court of Appeals for the Ninth Circuit. The American Schooner "Halcyon," etc., vs. Inter-Island Steam Navigation Co., Ltd. Praecipe Re Désignation Parts of Record to be Printed. Filed Sept. 6, 1916. F. D. Monckton, Clerk.



IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

THE AMERICAN SCHOONER "HALCYON," her tackle,
 apparel, machinery, boats, furniture, appurte-
 nances, cargo and freight money, and
 J. A. T. OLSON, master and claimant,

Appellants,

VS.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIM-
 ITED, a Hawaiian corporation, owner of the
 Steamer "Niihau," for itself, the officers and
 crew of said steamer and other servants of
 said owner,

Appellee.

APPELLANT'S BRIEF.

NATHAN H. FRANK,

IRVING H. FRANK,

Proctors for Appellant.

Filed this.....day of October, 1916.

Filed

OCT 16 1916

FRANK D. MONCKTON, Clerk.

F. D. Monckton

By.....Deputy Clerk.



No. 2830

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

THE AMERICAN SCHOONER "HALCYON," her tackle,
apparel, machinery, boats, furniture, appurte-
nances, cargo and freight money, and
J. A. T. OLSON, master and claimant,

Appellants,

VS.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIM-
ITED, a Hawaiian corporation, owner of the
Steamer "Niihau," for itself, the officers and
crew of said steamer and other servants of
said owner,

Appellee.

APPELLANT'S BRIEF.

This is an action for salvage services rendered on the 13th of January, 1914, in the harbor of Hilo, Island of Hawaii.

The points that we propose on this appeal are two, viz.:

1. The "Niihau" was guilty of such negligence or misconduct in the performance of the service as to disentitle her to salvage.

2. If she be entitled to salvage, the award of one-half of the value of the vessel and one-third the value of the cargo is, under the circumstances, grossly exorbitant.

I.

THE "NIIHAU" WAS GUILTY OF SUCH NEGLIGENCE OR MISCONDUCT IN THE PERFORMANCE OF THE SERVICE, AS TO DISENTITLE HER TO SALVAGE.

In the main, the facts are pretty well settled. It appears that on the evening of January 12, 1914, the schooner "Haleyon", laden with a cargo of lumber (a small portion of her deck load having been discharged), and lying alongside the wharf in said harbor, starboard to the wharf, was made fast thereto with two lines, and also breasted off the wharf by means of two lines running to two buoys about 200 feet from the wharf, and with her port anchor down.

At about 9 o'clock of that evening she carried away her head-line and fell to the stern, colliding with a little schooner at the wharf astern of her.

She was hauled off from this position by means of her breast-line running to the buoy, after which the starboard anchor was dropped. The vessel was then about a couple of hundred feet from the wharf. One of the lines to the buoy carried away, and about 3 o'clock in the morning the master ran another line out to the buoy. She was then held by the two lines to the buoy, and the two anchors.

The position in which she was at that time is somewhat in dispute, as the master of the "Halcyon" testifies that he was then "just about abreast of the little schooner". (Rec. p. 120.) Other witnesses put him further in, at a point marked on Libelee's Exhibit No. 1 as "Halcyon-2". None of the witnesses have much foundation for fixing her position in the proximity of the piles, because it was a dark night, and no one seems to have seen the piles.

Perhaps the most reliable testimony upon this subject outside of that of the master of the "Halcyon" is that of Morton, the purser of the "Niihau", because he was passing the "Halcyon" and also the "Ka Moi" on his way to the "Niihau", and therefore observed both vessels. He attempted at first to fix the distance of the "Halcyon" from the piles, which was evidently the result of theory, and not observation. He finally says that his distances are approximate, and that it was a dark night, and he did not pay any attention to the distance. (Rec. p. 303.)

However, after making his drawings and testifying to the position with respect to the piles, he concludes:

"My drawing this map here kind of balls things up a little. The 'Ka Moi' was lying here and she wasn't far from the schooner.

Q. How far away was the 'Ka Moi' from the schooner at that time?

A. I can't tell you that because it is hard telling it going out on a dark night when you can see just a few feet ahead of you; approximately about two hundred or two hundred and fifty feet from the 'Ka Moi'." (Rec. pp. 302-03.)

Allowing for the distance which the "Haleyon" had been swung out from the wharf in order to clear the "Ka Moi", this testimony as to the distance of the former from the latter is not much different from that of the master of the "Haleyon", when he says he was just about abreast of the little schooner.

Whatever her position was at that time, it could not have been one of very great danger. Of course, it was not a desirable position to be in, and the captain gave expression to his recognition of that fact by his calling to the passing boat, and his exhibition of blue lights. Nevertheless, it must be borne in mind that he was then being held by two anchors and two lines to the buoy ahead, and that the point where he lay was more or less protected by the wharf. It is admitted by the master of the "Niihau" that at the point where the "Haleyon" then lay, neither the wind nor the sea was as strong as it was at the outer end of the wharf (Bruhn, p. 42.) It must also be borne in mind that the schooner "Ka Moi" was lying at the wharf, a distance of not more than 250 feet from her, and, so far as appears, safely moored to the wharf during this entire period.

The "Haleyon" lay in that position for about an hour, during which time the master's conclusion that she did not drag, because if she had she would have parted his line to the buoy, or dragged the buoy (neither of which seems to have occurred), appears to be reasonable.

So, also, it is to be noted that the row boat of the "Niihau" does not appear to have experienced any

difficulty in going out of the river, past the "Haleyon" and past the wharf, to the "Niihau", lying beyond the outer end of the wharf.

It appears that the purser, in this small boat, reported to the master of the "Niihau" that the schooner wanted assistance, whereupon the latter vessel hove up her anchors, steamed over toward the outer end of the wharf, where she dropped both her anchors, paid out 90 fathoms of chain, and by this means backed down toward the schooner. (Rec. p. 335.) He then sent a small row boat with a six-inch line to the schooner, which was made fast to the latter.

After the line had been passed from the "Niihau" to the "Haleyon", the master of the former sent his mate with the boat's crew to make soundings (Rec. p. 339), and so far as they could judge, the depth of the water was 3 fathoms at the bow, and about $2\frac{1}{2}$ abreast the mizzenmast, which is close to the stern.

These soundings, if accurate, place the vessel somewhat further out, as the nearest to 3 fathoms in that vicinity is 17 feet somewhat to seaward from the inner end of the wharf.

Whatever conclusion we come to from this data as to her position, certain we are that in this position there was not very much danger to the schooner, nor very much danger to the salving vessel in rendering the service.

The salving vessel was coming in alongside of a wharf with which the master was familiar. She was held by her anchors in position, and while we do not

intend to urge that the service was not at this time a salvage service, because we appreciate the fact that any danger to the salved vessel is sufficient to change the nature of the service from that of towage to salvage, yet, with all the circumstances considered, it was necessarily a very low order of salvage service.

The most that the libelants claim with respect to danger to themselves in rendering this service is, that the "Niuhau" might in some way have become foul of the buoy, and if she had, (of which there appears to have been very little likelihood, the master's claim being that fouling might have resulted from his swinging to his anchors when he first dropped them), what could have been the result? The most likely thing is that he would have ridden over the buoys, which are nothing but flat wooden boxes. We would not expect his propeller to become engaged, because in that operation he would not use his propeller, but would be swinging to his chains. However, assuming that the propeller might have become engaged, nothing could have happened to him, for he was riding at two anchors, and daylight was not far off.

We are prepared, however, to give him the benefit of any danger which he sees fit to claim in this connection. It is yet not of such a serious nature as would entitle him to any unusual award.

The other danger which he claims was a danger to his small boat in passing the line. However, in this connection, it will be observed that his small boat carried the six-inch hawser and passed the line to the "Haleyon" without using a surf-line, and did it

successfully. It will also be observed that the "Niihau's" small boat came out of the Waiakea River, thus having traversed what must be considered to have been the most dangerous part of the trip between that river and the new position of the "Niihau", and also proceeded further out into the harbor alongside the "Niihau" in her original position. All this was done in the ordinary course of the business of the vessel without any connection with salvage operations. So we think it may fairly be concluded that this assumed danger to his small boat in passing the line is at best an exaggeration, if nothing more.

So we contend that had nothing further occurred than the passing in of the steamer "Niihau" and the picking up of the "Halcyon" from its first position, and towing him to a safe anchorage out in the harbor, the award must necessarily have been a nominal salvage award.

PARTING OF THE TOW LINE AND DELAY IN RENDERING ASSISTANCE.—At this point the circumstances arose upon which the principal controversy in this case centers:

When the "Niihau" had drawn the "Halcyon" away from the position which we have just been considering, and had towed her a considerable distance into the Bay outside of the buoys, toward the end of the wharf (which position the master of the "Niihau", in his drawing, Libelee's Exhibit B, indicates as "Halcyon-2"), the tow line parted. When the towing started, the "Halcyon" lost her port anchor, and while being towed to this position was compelled to slip the hawser which she had attached to the buoy. As soon as the

tow line parted, the "Halcyon" dropped her starboard anchor. The "Niihau" was then some 300 feet ahead of her. The storm, according to the libellant, was at this time as bad, if not worse, than it had been at the time the "Halcyon" originally parted her lines from the wharf and dragged her two anchors, while the new position was more exposed.

The master of the "Niihau" testifies that it was blowing at the rate of 40 miles an hour, with the sea in five or six foot billows running toward the shore.

The fact of the first break from her moorings, and dragging of the "Halcyon" would have been sufficient to warn any seaman of ordinary experience that this new position, after the parting of the tow line, could not be a safe anchorage with one anchor down, and even without these antecedent warnings no one of ordinary knowledge of such affairs would think of relying upon an anchor taking immediate hold when dropped in such a seaway and under such conditions.

In fact the master of the "Niihau" knew that it was not a safe anchorage, for he says that he had intended to take her out "to a safe anchorage out in the Bay there" (Rec. p. 392), which position the witness indicates by a cross surrounded by a circle on the map Libelee's Exhibit No. 2. He further testifies that he noticed at that time that she had but one anchor, and that fact, as well as the condition of the wind and water, were considerations that suggested to him the feasibility of standing by her:

"Yes, that as well as the wind and water; of course I didn't know how much chain he had or the

condition his anchor was in; if it was a heavy anchor or a light anchor; that I didn't know." (p. 393.)

Nevertheless, upon the parting of the hawser, the "Niihau" took no immediate steps to ascertain the conditions or to save the "Halcyon" from further damage or injury.

There seems to be no question of the feasibility at this time of the "Niihau" again sending a boat back to the "Halcyon", or, indeed, of the "Niihau" herself coming alongside to ascertain whether the "Halcyon" was reasonably safe under these conditions. Small launches and row boats seem to have been in the neighborhood cruising about, which indicates sufficiently the practicability of sending the small boat, which originally passed the line to the "Halcyon", back to her a second time, either with a line to again make fast, or at least to satisfy the master of the "Niihau" of the conditions with respect to the safety of the "Halcyon". But he did neither of these. On the contrary, *he dropped his anchor*, and he does not appear to have been aware that the "Halcyon" was dragging until some 15 or 20 minutes thereafter.

The tow line parted at about 6 o'clock in the morning. (Bruhn, pp. 393-409.) He watched her drag for about two hours, and until, as the libelant himself claims, she was well within the breakers, and had sent out signals of distress, before he sent a boat out with a line to render her assistance. He had, however, at some point of time within this two hours, changed his position closer to the vessel on the beach.

The master of the "Niihau" makes claim that the small boat was on the way between the two vessels, with a line, when the signal of distress went up. Even as to this he is disputed by observers from the shore, who were disinterested except in so far as they represent consignees of the cargo at the port of discharge. The materiality of this fact, in which a difference of about 10 minutes is involved, lies in the suggestion that he was waiting for the distress signal as an acknowledgment of extreme danger.

But whether he waited for the signal of distress or not, he certainly waited until she was in a position which he now claims was one of great danger—danger of total loss of both vessel and cargo—before he sent a line to her assistance.

Under these conditions, the fact is undisputed that from the time she parted her hawser, which the master of the "Niihau" fixes at "somewhere around 6 and a little after 6" (pp. 393, 409), until she had gone into the breakers ashore and had grounded, no second hawser was passed to her.

Prima facie these facts suggest negligence, or something worse. It is not an unusual experience in these cases to find salvors allowing vessels while yet in comparative safety, to get themselves into a position of extreme danger before proceeding to their assistance, upon the theory that by thus rescuing them from the greater apparent danger they will enhance the value of their services—that the danger being thus demonstrated, no question can be made with regard thereto—and upon a fair consideration of the evidence in this case we

are impressed with the idea that this is but another illustration of such tactics.

The familiarity of this Court with such practices is demonstrated by what is contained in the case of *Pacific Mail Steamship Company v. Commercial Pacific Cable Co.*, 173 Fed. R., 46, and we ask the indulgence of the Court for quoting part of the language appearing there:

* * * “while he who holds back and quietly looks on at approaching ruin until his own services become indispensable to the preservation of the property he sees exposed, with the expectation that his reward will thereby be increased in proportion to the increased danger from which the property is ultimately rescued, will find that he is disappointed in the realization of his golden hopes, and that a display of avarice at such a time renders him an object of contumely and reproach.”

As we have already said, the lapse of time, and the conditions attending this service, make out a prima facie case against the master of the “Niihau”, and of this he seems to have been aware, for he is immediately placed upon the defensive.

Now let us see how he meets it, and what his explanation is.

We have already pointed out that when his line parted he did not take immediate steps to insure the safety of his tow. He dropped his own anchors, which, under the circumstances, he should not have done. After having dropped his anchors he says that he observed her for 15 or 20 minutes before he noticed that she was dragging and drifting toward the beach (pp. 395-

96); and that in the meantime, from the time that he saw her dragging until she got on the beach, until "she got as close to the beach as she ever got, that is an hour and three-quarters, *we were preparing, getting everything ready*". (pp. 396-97.)

The Court will notice how the witness (pp. 394-95-96-97) continually repeats the indefinite excuse for his delay, "We were preparing".

When finally forced to particularize, he is compelled to admit that this "preparing", this "getting everything ready", *would have occupied not to exceed half an hour*. Note the following:

"Q. You say you were preparing. What did you do in the line of preparing?

A. Getting everything ready.

Q. What was that?

A. That was in the case of lines, coiled in our boat.

Q. And how long a time did that take?

A. Well, that doesn't take so very long; took the time I got everything ready to stand by and move the ship slow.

Q. How long a time in point of minutes did it take for you to heave your anchors, prepare your lines, and get your boat in readiness?

A. In readiness? About something like about a half an hour; every bit of that." (pp. 396-97.)

Again:

"Q. Now how long a time elapsed from the time you left the position N-1 until you got to the position N-2?*

*N-1 is the position the "Niihau" anchored when the line parted; N-2 is the position of the "Niihau" at the time she passed lines to the "Halcyon."

A. How long a time up to the present time here now?

Q. How long a time did it take from the time that you left your position at N-1 until you arrived at your position at N-2?

A. To steam down there and redrop the anchors, that didn't take long. I never marked the minutes down, the exact minutes. In that space of time we was preparing and moving right along; when we arrived in this position here we was continually working around and watching the 'Halcyon' trying to follow her up. I didn't mark down every little thing.

Q. From the time you left N-1 until you arrived at N-2, until you dropped anchor at N-2, how long?

A. That was somewhere around 25 minutes.

Q. Did you send her a line, did you send the 'Halcyon' a line immediately upon your arriving at the position N-2?

A. We started right after the 'Halcyon', yes; got the boat crew and everything else. (pp. 398-99.)

* * * * *

Mr. RUSSELL. How long a time elapsed from the time that the boat's crew were in the boat until the boat started with the line?

A. Well, that was a few minutes; it might have been between 5 and 10 minutes, to get the surf-line.

Q. Captain, you say that about 15 or 20 minutes after the tow line parted you saw the 'Halcyon' begin dragging her anchor. Let us assume that it was 20 minutes. You say that you took from 20 minutes to 25 minutes more to proceed from N-1 to N-2. Is that right?

A. That's the time we got there; it didn't take us that time to get that far; that maneuvering and everything included, going ahead." (Rec. p. 399.)

We will not reprint the rest of the testimony upon this subject. We consider the foregoing a fair statement of its general effect, but we suggest that the subsequent

examination of this witness, pages 400 to 411, be read in this connection. It does not change the facts, but it does illustrate the fact that the master's attempt at explanation does not explain. The inevitable conclusion from the whole testimony is, that he was not doing his duty, and that he was aware of that fact.

If anything were needed beyond the nature of this testimony to cast doubt upon the good faith of the master in this regard, we have but to recall the language of the Court in the case of *The Roberts*, that the testimony of witnesses in this master's position, "when it relates to what can be construed into their own misconduct, should be viewed with great suspicion". (20 Fed. Cas. 923.)

Having in view this inability of the master to explain his delay in rendering this service, we have but to consult the testimony of two shore witnesses of that particular part of the transaction. They are Mr. E. T. Nicholls, the manager of the Hilo Mercantile Company, and Mr. J. D. Easton, assistant manager of said company. The Hilo Mercantile Company was the consignee of a part of the cargo of the "Halcyon", the rest of it being consigned to the Hackfelds. (Rec. p. 437.)

These gentlemen are able to testify accurately respecting the time, because of memoranda made by them at the time of its occurrence.

Mr. Easton was on his way from his house to his work, and at about 10 minutes to 7 saw the "Halcyon" from his position on the road by the bridge across the Waiakea River, marked on libelee's exhibit by a cross,

and watched the vessel practically all the time after that until the "Niihau" sent her a line. He came up to the store and rang up Mr. Nicholls, and went down to the beach and watched her off and on all morning, until they got her out. (Rec. p. 437.) He says that the "Niihau" sent her a line between 8 and 9 o'clock; he does not know the exact time; that he took particular notice of the "Niihau"; *that he noticed her about a quarter to 8, at which time the "Niihau" changed her position.*

"She was lying considerable distance off shore; about a quarter to eight she came in closer; then they had a shore boat alongside her; one of their shore boats and some men in it. I noticed that particularly. The 'Niihau' changed her position only once."

Before she changed her position, he saw her almost due north of the railroad wharf.*

"At that time she changed her position to the point where she began to tow the 'Halcyon', came in and dropped her anchor and then backed up. And *after she dropped her anchor in her changed position* it was about *an hour or an hour and a quarter* until the boat was sent to the 'Halcyon'." (Rec. p. 438.)

That the small boat went out from the "Niihau" just as the signals of distress were put up by the "Halcyon". That the tow out to the anchorage in the Bay was completed at 10:05, which time is fixed from a memorandum made by him on the manifest of the ship. (Rec. p. 440.)

* By consulting the map it will be seen that this is the position where she dropped her anchor when the tow line first parted.

The witness is positive that the small boat did not leave the steamer *until after the flags* of distress were put up (Rec. p. 441), but that it left immediately after the signal. (Rec. p. 442.) The "Niihau" was on her inside anchorage *at least an hour before she put the boat out.* (Rec. p. 442.)

Mr. Nicholls was on the railroad wharf when the "Halcyon" broke out her signals, and *from a memorandum made at the time he fixes this at 8:35 in the morning* (Rec. p. 454-55), and says that the life boat departed for the "Halcyon" after the signals went up, about 5 or 10 minutes after. (Rec. pp. 455-56.) That he observed the steamer for an hour and a half before this; that he was on the wharf at 7 o'clock, or about 7. (Rec. p. 456.) When he first saw her she was out toward the end of the railroad wharf, and changed her position and came back in towards where the "Halcyon" was lying, where she remained *half or three-quarters of an hour before she sent a boat to the "Halcyon".* (Rec. p. 456.)

He is also positive that the small boat did not leave before the distress signal went up, but left a few minutes afterwards (Rec. p. 458), within a matter of 5 or 10 minutes after the signal broke out, the small boat left the steamer's side.

From the foregoing testimony we at least have definitely fixed the point of time when the signals were displayed; that was 8:35 in the morning, and we have the small boat going out 5 or 10 minutes after.

We have also definitely fixed the fact that the "Niihau" did not leave her first anchorage *until after*

7 o'clock, for both these men saw her leave her first anchorage, and Mr. Nicholls not having arrived at the point of observation until about 7 o'clock, it is definitely certain that the "Niihau" did not start in immediate pursuit of the "Halcyon". That she delayed at least an hour, if not more, in starting.

We have also definitely fixed the time between the breaking of the hawser and the sending out of the small boat, for the master of the "Niihau" insists that it was not more than a quarter past 6 when the hawser parted. As we find it was 8:40 or 8:45 when the small boat was sent out, we have a matter of over 2 hours and 20 minutes to be accounted for.

We have also the master's testimony to the effect that the time he consumed in "preparing" (which preparation according to his testimony included everything necessary between the start from anchorage No. 1 to the putting out of the small boat from anchorage No. 2) was not to exceed 25 minutes. So, we have two hours of inactivity, under circumstances such as called for the greatest activity.

As we have already suggested, this to our mind is conclusive evidence of gross negligence, or something worse. For the purposes of this case we do not conceive it to be necessary to determine what the motive was. The "Niihau" had taken the "Halcyon" from a position of comparative safety, and had allowed her to drift into a position of what is claimed to be one of extreme danger, and where, from the testimony of the surveyors, she must have sustained considerable damage. Under such circumstances it is questionable if

she be entitled to any award at all. We shall presently refer to some cases touching this question.

In the meantime let us for a moment consider the parting of the tow line.

WE REGARD THIS, ALSO, AS PRIMA FACIE EVIDENCE OF NEGLIGENCE ON THE PART OF THE "NIIHAU".

The cases of *The Sweepstakes*, Fed. Cas. No. 13,687, and that of *The Quickstep*, 9 Wall. 665, while not exactly parallel cases, are sufficiently so to suggest the rule which we seek to apply in the present case.

In the first of the above named cases, the Court said:

"Undoubtedly it was the duty of the tug to see that the line was securely fastened, no matter what mode of fastening was adopted, and so as to hold in all emergencies likely to happen, whether ordinary or extraordinary; and the fact that it did not so hold is the best evidence that the duty was not performed. I know of no safe rule other than to hold tugs responsible prima facie in all cases, for injuries resulting from the tow line slipping or giving away from its fastening upon the tug. The expert testimony shows, and without it common sense teaches, that a tow line can be fastened so that it will not slip, and therefore the above rule is not unreasonable. *The Quickstep*, 9 Wall. 665; *The Olive Baker*, Fed. Cas. No. 10,497."

In the second of said cases, which was a towage of canal boats in which a collision occurred by reason of the *parting* of the tow line, the Court said:

"It was the duty of the tug, as the captains of the canal boats had no voice in making up the tow, to see that it was properly constructed, and that the lines were sufficient and securely fastened. This was an equal duty, whether she furnished the lines

to the boats, or the boats to her. In the nature of the employment, her officers could tell better than the men on the boats what sort of a line was required to secure the boats together and to keep them in their positions. If she failed in this duty she was guilty of a maritime fault."

The case of *The Margaret*, 96 U. S. 494, also seems to support our view of the claim of negligence on the part of the "Niihau".

In that case the vessel was under tow, and one of the hawsers parted, by reason of which the vessel was thrown by the force of the swell on the end of the pier, and sunk. In the crisis thus brought about, the tug did all that could be done to relieve her from the perils of her situation, but without avail. The Court said:

"If the tow line was too weak, the tug should have called attention to it. Silence was a fault."

After stating that the tug was bound to exercise reasonable skill and care in everything relating to the work, and that "the want of either in such cases is a *gross fault*," the Court continued:

"The spring head of the disaster was the sudden turning of the tug around the end of the pier, combined with the shortness of the tow lines. This involved the stopping of the tug and the loss of steerage-way of the brig.

"Conceding that the mode of entering the harbor by the tug was the best under the circumstances, and the disaster therefore inevitable, then the effort showed a clear *want of judgment*. As before remarked, she should have known this and governed herself accordingly. *Her conduct, in this view was more than an error, it was a fault; and upon this ground she should be condemned.*"

The application of this rule to the present case is found in the fact that if the line was parted by reason of the storm, then having in view the fact that the "Halcyon" had originally broken from her moorings, having parted two lines and dragged two anchors, ordinary diligence in undertaking the tow would require that two lines, instead of one, be used in towing her out, as was actually done by the "Niuhau" in the case of the second tow. The "Niuhau" having undertaken to tow the "Halcyon" out to a safe anchorage, and for that purpose having herself furnished the line, it was his duty to see that he furnished a line sufficient for the purpose.

If it was not the storm that parted the line, but on the contrary if it was, as contended by the libellant, that the line was cut by contact with one of the buoys, such parting was likewise the result of negligence on the part of the "Niuhau", because the master of the "Niuhau" testifies that when he first made fast to the "Halcyon", he took up a position such as required him to pass his line *between* the buoys, and which would necessitate the line being drawn across the buoys during the towage. If he knew this at the time he testified, he must have known it at the time of making the tow; and if he didn't know it at that time, it is because he did not take the proper precautions in the premises. He had taken the precaution of sending out a small boat to make soundings alongside of the "Halcyon", and since in his testimony he makes so much out of the alleged danger to his tug by reason of the proximity of the buoys, it would have been but ordinary prudence upon his part

to have also sent his small boat out in order to fix the location of the buoys with respect to the tow he was about to undertake.

If, as suggested in the above cases, it was his duty to see that he furnished a line sufficient for the purpose, it was further his duty to see that the line, when made fast, was so made fast as not to be interfered with by the buoys in the process of towing.

For the foregoing reasons we deem that the parting of the hawser itself was *prima facie* negligence upon his part, for which he offers no excuse.

ACTION AFTER TOW LINE PARTED.—If we confine our attention to the actions of the master after the tow line parted, we have still before us a case in many respects similar to the case of *The Printer*, 164 Fed. R. 316-17, where a tug was held liable in damages for leaving the schooner with undue haste, and in not standing by to see if she was safely anchored, in the course of which opinion the Court said:

“The master of the tug undertook a certain towage service. He was prevented from the continuous performance of that service, by the condition of the tide. But the duty of the tug to the schooner was a continuous one from the time when she was taken in tow until the completion of the towage contract. The tug’s duty did not end with letting go the tow line at the anchorage grounds. Its obligation of reasonable care continued, at least until the schooner was safely anchored. *Connolly v. Ross* (D. C.), 11 Fed. 342; *The Snap* (D. C.), 24 Fed. 510; *Hastorf v. The Governor* (D. C.), 77 Fed. 1000; *Hughes v. Railroad Co.* (D. C.), 93 Fed. 510; *The Thomas Purcell, Jr.*, 92 Fed. 406,

34 C. C. A. 419; *The American Eagle* (D. C.), 54 Fed. 1010; *The Battler* (D. C.), 55 Fed. 1006; *Alaska Commercial Co. v. Williams*, 128 Fed. 362; 63 C. C. A. 92; *Brown et al. v. Cornell Steamboat Co.* (D. C.), 110 Fed. 780."

THE RULE AS AFFECTING SALVAGE WHERE THE SALVAGE VESSEL HAS BEEN GUILTY OF NEGLIGENCE IN THE PERFORMANCE OF THE SERVICE.

We are aware that the Court is familiar with the cases under which this rule has been applied, as it had it under consideration in the case of *The Celtic Chief*, 230 Fed. 767. However, in order to point our view of the application made by the Courts of said rule to facts which we regard sufficiently analogous to the facts in the case at bar to warrant its enforcement in the present case, we take the liberty of presenting some of them in detail.

The Duke of Manchester, 2 W. Rob. Adm. 470. This was a case where a tug after pulling a vessel off of the beach subsequently ran her into difficulty by towing her aground on another shoal. The tug gave as an excuse, that the tow would not answer her helm, and further, that she was in charge of a pilot, by reason of which it was claimed the only duty of the steamer was to follow out the course which the pilot directed, and was not bound to interfere to prevent the consequences of steering in a wrong direction.

The facts were referred to the Trinity Masters, who found that the second grounding upon the Sandwich

Flats was not occasioned by the state of the weather or the disabled condition of the ship; that the stranding of the vessel could have been prevented by ordinary care and skill, and that there was on the part of the tug great culpability and negligence and disregard of duty.

The Court (Dr. Lushington) concurred in this, and said: that in addition to a neglect of her own duty, the tug was guilty of a great breach of all moral obligation in persisting in the course which she took, without giving warning to the persons on board "The Duke of Manchester". In his judgment that culpability was not in the slightest degree diminished by any error which might have been committed by the pilot on the board "The Duke of Manchester", for which reasons he refused to make any award in favor of the tug, and dismissed the action.

In the course of his opinion the Court used the following language:

(p. 447.) "In the first place it is, I apprehend, an undoubted proposition, that salvors may be curtailed or even deprived altogether of their salvage remuneration through error, misconduct, or want of skill and capacity in the performance of a salvage service. Even where essential services have been rendered to a vessel, the subsequent misconduct of the salvor may not only diminish the amount of his reward, but his entire claim may be forfeited. This doctrine was distinctly laid down by Lord Stowell in the case of *The Medina*, which was cited by the Queen's Advocate; and in the case of *The Neptune*, which came before me, and in which I was assisted by two gentlemen of the Trinity Board, I myself acted upon this doctrine, and declined to give any salvage at all, the

Trinity Masters having pronounced that the asserted salvors had been guilty of gross negligence, if not of wilful carelessness, *in allowing the anchor to let go, and in keeping the course of the ship to the north when they should have gone to the south.*”

The Cape Packet, 3 W. Rob. 122. This was a case where the salvors after rescuing the vessel in making the harbor caused the vessel to strike a rock.

The Trinity Masters found that the salvors were not justified in risking a disabled vessel by conducting it into the harbor over the course they took, and the Court made a deduction from what he would otherwise have awarded them, upon the principle laid down by the Court in that case as follows:

“That when persons undertake to perform a salvage service, they are bound to exercise ordinary skill and ordinary prudence in the execution of the duty which they take upon themselves to perform. I do not mean to say that they must be finished navigators; but they must possess and exercise such a degree of prudence and skill as persons in their condition ordinarily do possess, and may fairly be expected to display. I need scarcely point out to you, that, where the neglect is wilful, it entails an entire forfeiture of the whole claim to salvage remuneration. This is not attributed to the salvors upon the present occasion. There may again be instances of such gross negligence, independent of any wilful attention, as would debar all claim for salvage recompense. Such was the case of *The Lockwoods*, which was cited in the argument by one of the counsel for the owners. There is also another kind of negligence, the effect of which is to diminish the amount of salvage award, not to take it entirely away. The extent of this diminution, I may further state, is not measured by the amount of loss or injury sustained, but is framed upon the

principle of proportioning the diminution to the degree of negligence, not to the consequences.” (Dr. Lushington, p. 125.)

The Mulhouse, Fed. C. 9,910. This was a case where salvors being in possession of the vessel, men from the shore came on board and stole a keg containing \$5000. The thieves, while on their way to the landing, being discovered by fishermen ashore, whose boat they were using, dropped the keg overboard. It was subsequently recovered by the fishermen and returned to the captain of the ship.

The Court said that it was very plain upon these facts that the master, mate and seamen composing the whole crew who came up in the sloop from the wreck, and upon whom the *duty of watching and taking care of the goods* committed to their keeping was devolved, have forfeited their shares of the salvage, both upon the money and upon the cotton, because of their neglect to take proper care of the money; that it was their duty to exercise the same degree of diligence in keeping the property placed in their custody, that a prudent man ordinarily takes and exercises in keeping his own property, and tested by that rule they were guilty, not of ordinary neglect merely, but of gross negligence—so gross that it produces a suspicion that they were in collusion with the thieves.

“But it is not necessary to accuse them of larceny or embezzlement. Their shares are as much liable to forfeiture for so gross a neglect of duty, as for embezzlement or larceny. ‘The maritime law’, says Justice Story, ‘demands most emphatically from salvors, scrupulous good faith and uprightness of

conduct—giving them a liberal reward for fidelity and vigilance, and visiting them with severe reprobation and diminished compensation for every negligence’.”

The Court then cites many cases applicable to the above principle, among them being that of *The Cape Packet*, *The Duke of Manchester*, and also instances the case of *The Glory*, 14 Jur. 676, wherein

“Dr. Lushington diminished the salvage two-thirds on account of the misconduct of the salvors, *in preventing the employment of a steam tug, though no loss or damage accrued to the owner of the property saved on account of such misconduct*”.

The Roberts, Fed. Cas. 11,914. This is a very instructive case upon the question here involved. It is a long opinion, taking under consideration the rights of many salvors as affected by their connection with acts which are held to have been evidence of lack of skill, for which salvage was forfeited.

The vessel was upon a reef, and the first act for which the Court decreed a forfeiture of salvage was the fact that

“The masters of the first three vessels all saw the ship strike before dark, and immediately started to her assistance. They knew that they could render no aid by themselves without their vessels, yet so eager were they, not to render assistance, but to get on board before some one else, that they all left their vessels at anchor from a half to three-quarters of a mile from her, and with small dingy boats pulled over the reef to get on board. This, even, when they left their vessels on the windward and exposed side of the reef, and when, according to the testimony of numerous experts, it would not

have taken more than half an hour more to have brought their schooners out to the ship."

Under these circumstances, the vessels

"did not arrive at the ship until between 7 and 8 o'clock thereby losing much valuable time, and time that would have enabled them to have had a heavy anchor and chain carried out by the next high tide". (pp. 922-23.)

After arriving at the ship, the wreckers proceeded to take out two small anchors, while the master of the vessel insisted they take out his bower anchor and chain, that they might have something to depend upon.

In determining the question of fact respecting this latter matter, the Court makes an observation which we think applicable to the testimony of the master of the "Niihau" in the case at bar, namely:

"The question of interested witnesses is also to be well weighed, and although, in admiralty, interested parties, *ex necessitate rei*, are permitted to testify, their testimony, *where it relates to what can be construed into their own misconduct*, should be viewed with great suspicion; and where confirming evidence can be introduced, and is not, the absence of such supporting testimony will weigh materially against receiving that of the interested party." (p. 923.)

As to the method adopted to heave her out, the Court, after considering the details, which, among other things, had to do with the parting of the hawsers, concludes:

"Were it not for the sad and disastrous consequences, it would seem almost absurdly ridiculous to see a company of seafaring men—licensed wreckers, who held themselves out as qualified and competent—attempting to heave a ship, hard

aground, with 1800 tons of stone and iron in her, afloat with a six-inch line, after they had parted a twelve-inch hawser in the same service."

We make this quotation for what it is worth in connection with the fact that in the present case a six-inch tow line, which parted during the service, was used after the vessel had parted her mooring at the wharf and her line to the buoy, and dragged with two anchors down.

Because of the failure of these salvors to carry out the bower anchor and sufficient chain to reach the ship in the proper direction to bring her back in the direction in which she went on, and especially because they failed to do so in spite of the protests of the master and mates, and the fact that they took up an anchor which the vessel already had down, and which prevented the vessel's drifting broadside against the reef, and especially because they parted a twelve-inch hawser they made fast, and attempted to float the vessel with a six-inch hawser, the Court held the salvors guilty of such gross negligence as forfeited their salvage, and in this connection said:

"I do not intend to say or imply that I consider that any of the libelants acted with intentional bad faith, or dishonest purposes so as to taint any valuable service subsequently rendered, but that the services rendered the ship were grossly inefficient, and not deserving reward." (p. 925.)

The Court then considers the claims of other salvors with the elements of misconduct alleged against them, upon which subject the remarks of the Court are inter-

esting upon the general subject of forfeiture, and the grounds thereof.

The Diadem, Fed. Cas. No. 3874 (syl.):

“Twelve Thousand Dollars held to be a reasonable award for getting a ship and cargo worth \$125,000 off a reef at Key West; but this amount reduced by half because of 24 hours delay resulting from carelessness, negligence and gross errors of judgment on the part of the salvors.”

We consider the foregoing cases sufficient to indicate our view of the law and its application to the facts of the case at bar.

II.

We come now to the second proposition, namely:

IF THE “NIIHAU” BE ENTITLED TO SALVAGE, THE AWARD OF ONE-HALF OF THE VALUE OF THE VESSEL, AND ONE-THIRD THE VALUE OF THE CARGO, IS, UNDER THE CIRCUMSTANCES, GROSSLY EXORBITANT.

DEDUCTIONS FROM REASONABLE AWARD.—If the Court does not consider the foregoing facts relating to the negligence or misconduct of the “Niihau” sufficient to warrant the denial of all salvage, it still is an important element to be considered in fixing the amount of the award, since the exhibition of skill and promptness in the service are determining factors in such a case.

The following cases suggest the mode in which the result is arrived at where such circumstances exist.

In *The John G. Paint*, Fed. Cas. No. 7,346, a salving vessel anchored the salvaged vessel near the port of New

York, intending to take her in in the morning, which the Court held was a mistake which caused some additional peril to the bark during the night, which better seamanship on the part of the brig would have avoided.

“No harm resulted from the mistake beyond the delay, and yet it detracts from the merit of the salvors.” * * *

“The same law which gives to the salvors a reward exceeding any value of the labor bestowed, exacts of them all diligence, and is careful to mark any relaxation of that anxious solicitude for the safety of a vessel in distress, the encouragement of which is the object of all salvage rewards.”

The Court deducted \$3500 from the award on this account.

In *The Arburton*, Fed. Cas. No. 575, salvors, though acting in good faith, neglected to inform themselves of the soundings around the ship, by reason of which the ship after being heaved off one reef, was heaved onto another, of which the salvors were ignorant, and of which it was their duty to be informed. A reasonable award of 15% was reduced to 11% because of this error of omission.

REASONABLE AWARD WITHOUT DEDUCTION.—In considering the question of what would have been a reasonable award had no misconduct intervened, it is well to have in mind what elements of salvage exist. They are few, and none of them in their nature extreme.

As already suggested, the original danger to the “Haleyon” and cargo was practically none. The danger

from which she was rescued in her second tow was no doubt serious, but it was not, as contended by the libelants, one of total loss. As some of the witnesses testified, she might have lain there over a week, under the conditions prevailing, before breaking up, and as the principal value saved was that of the cargo, it is morally certain that under any conditions, if the vessel did not go to pieces within that time, the cargo could have been saved at comparatively small expense, either by taking it ashore at the point of beaching after the storm had subsided, or by discharging it into lighters and taking it to the wharf. Neither does the evidence warrant the conclusion that both ship and cargo might not at some subsequent time have been floated with comparative ease. Certain it is, that in neither position was either vessel or cargo derelict.

There appears to have been little or no danger to the salving vessel. In both instances she was securely anchored at a safe distance, and while there is always a possibility of her chains parting, or (if the libelants insist upon it in this case), of her propeller fouling the hawser, still, neither of these dangers seem to have been apparent in the present case. Indeed the fouling of the hawser would in any case be of little consequence so long as the anchors held, and there is no suggestion that either the anchors or chains were insufficient for the purpose. We may fairly assume that the danger to the tug did not in any case exceed the dangers to which she daily subjected herself in the course of her employment. The master testified that in his regular employment there are many landings that he is compelled to make where

the boat's crew is sent ashore by the means of surf-lines:

“Yes, sir, very often; very common around a number of the landings. If you want me to name the landings I'll name some very bad landings. Kilauea is one. That's very treacherous. Hanalei has a very nice landing, but in winter time it is treacherous. There is another one I use surf-lines. There is another one in Kauai, Waimea; a very treacherous landing; we use the surf-line very often. Formerly when we had little boats and no wharf we used to handle the freight off the beach.” (Rec. p. 369.)

It is fair to assume that at the points above named and when the crew were sent ashore by means of a surf-line, the steamer lay off such shore by means of her anchors.

We think therefore we are justified in insisting that on the present occasion there was no danger either to the salving vessel or to the salvors greater than such as is commonly undertaken by them in the ordinary course of their employment.

There was no danger, to speak of, to those on board the “Halcyon”, certainly not in the first position, and almost as certainly not in the second position. The boat that brought the pilot aboard the “Halcyon” was astern of her at anchor in the breakers (her engine being temporarily disabled) before the pilot was put on board. While it does not appear that there would have been any necessity of taking the crew of the “Halcyon” off said vessel until after the storm had subsided, it seems

equally certain that at no time during that storm would there have been any difficulty in safely transferring such crew. The small boats—row boats—were about her all the time, and, under the very worst circumstances, if the “Niihau” could send a line aboard by means of a small boat and surf-line, there could have been no difficulty in taking the crew off by the same means.

So we think it is a fair deduction from the testimony that the only real element of salvage existing in this case was the danger to the vessel and cargo in her second position.

The time occupied, allowing for all delays, was from 4 o'clock in the morning to 10:05 the same morning—about 6 hours.

So far as the values saved are concerned—they are small,—\$1500 for the vessel, and \$6,381.85 for the cargo.

And yet, under these circumstances, the Court has given an award that would only be justified by the salvage of a derelict, and that, too, under circumstances involving great labor, and perhaps great danger, to the salvors.

While we do not find in the record anything to support the Twelfth Assignment of Error (p. 514), that the decision was rendered without the opportunity upon the part of the respondent to file its briefs and argument, we do know that the term of the Judge was about to expire, rendering it necessary for him to dispose of all matters submitted to him, and we feel justified in con-

cluding that this pressure upon the Court prevented a sufficiently careful consideration of the case.

In asking a review of this case we appeal to the principle recognized by this Court in the cases of *The Flottbeck*, 118 Fed. 965, and *The Celtic Chief*, 230 Fed. 763, that while an appellate Court will be reluctant to disturb the decision of the trial Court in salvage cases, nevertheless it is recognized that the appellate Courts are the final arbiters, and it is their duty to decide the question fearlessly and impartially, with a single eye to reach the ends of justice.

As said by the appellate Court of the second circuit in the case of *The Bay of Naples*, 48 Fed. 737:

“Appellate courts will look to see if that discretion has been exercised by the court of first instance in the spirit of those decisions which higher tribunals have recognized and enforced, and will readjust the amount if the decree below does not follow in the path of authority, even *though no principle has been violated or mistake made.*”

In view of these principles, we are taking the liberty of citing a few cases with a resumé of the facts, which, though perhaps not exactly like the case at bar, have sufficient similarity to suggest the trend of opinion regarding the value of such services.

Cases Indicating Value of Services.

The Penobscott, 106 Fed. 419; C. C. A. 4th Cir.:

A schooner laden with lumber ran aground on the shoals at the mouth of Cape Fear River.

She was pounding heavily, leaking some, and was among the breakers; tide rising; moderate breeze blowing; current drifting her further on the shoals. Distress signal flying, life boat lowered; baggage of crew partly on deck and partly in small boat.

Steamer Wilmington went to her assistance, and in going in to, and returning with the schooner she passed through the breakers, waves going over her sides and into the engine room. A portion of the life-saving crew stationed nearby boarded the schooner and rendered such assistance as they could; no other vessel in sight except a sand sucker working on the bar, but not within speaking distance of the schooner; steamer drew 14 feet; could not reach the schooner, whose bow was in nine feet of water.

Time occupied, about an hour.

Value saved	\$8,000.00
Original award	\$2,000.00
Reduced by appellate Court to....	1,000.00

The Nellie Floyd, 39 Fed. 221:

Three-masted schooner aground on the shore of Georgetown bar. Not under tow. Tug tried to get off, and failed, applied to the steamer P., which was going to Georgetown with a large and valuable cargo. Their efforts failed to move the schooner. The P. took on board some of the cargo, proceeded to Georgetown, and secured an extra force, unloaded her cargo, and returned. Weather in the meantime becoming threatening. Being unsuccessful she left and returned the next morning.

Jettisoned $\frac{1}{3}$ of the cargo.

Subsequently succeeded in dragging her across the shoal into deep water.

Wind was high, and once at least the P. touched bottom. Also lost her hawser.

Danger to the Floyd was not extreme, but the tug drew too much water to aid her, and there was no other steamer in the vicinity approaching the power of the P. The schooner could not have got off unaided without reducing her draft by two feet, and waiting until the next day's high tide.

The P. was a passenger and freight steamer, not engaged in towing, and worth...\$25,000.00

Value saved about..... 16,000.00

Award 1,000.00 and price
of hawser 135.00

The Ranger, 75 Fed. 688:

Ashore on "perhaps the most dangerous shoal on the Jersey coast. Her position was one of extreme peril. There is little reason to doubt that, if she had not received assistance, she would have been a total loss." Other fishing boats in the vicinity refused to go to her assistance on account of the risk. The Allan concluded to run the risk. Lay by her all night, and at dawn the next morning began to pull. With the aid of another boat, not included in this case, succeeded in getting her off. The service was rendered not without considerable

risk, and the peril to which the Rawson was exposed was extreme.

Value saved	\$9,000.00
Award	\$1,750.00

The Hyderabad, 11 Fed. R. 749-758:

This was a case of a vessel on the Great Lakes, damaged by collision. Her crew left her for fear of her sinking; she had been deserted for nearly 30 hours when the tug came upon her; she was not, however, derelict, though in great danger for some time after the collision. The wind and sea went down, and after the tug got well under way with her tow the weather settled and was fine, and so continued until their arrival in port.

Services were well timed, faithful, and highly meritorious, but there was nothing extraordinary in the service.

The value saved was.....	\$17,566.87
Award	\$1,750.00

The Thomas L. James, 115 Fed. 566:

Schooner loaded with lumber run ashore by the master "to save life," on the coast of North Carolina, and stranded between two bars, in a position of extreme peril. She was regarded by her master and mate as being in an almost hopeless condition.

Three feet of water in her hold.

Drew thirteen feet, and was stranded in $10\frac{1}{2}$ feet at ordinary high water.

Libelants, 10 in number, went on board and remained 3 days in a position of great peril. Pumped out the vessel and threw overboard her deck-load of 122,000 feet.

With the assistance of others floated the schooner and brought her into port. Also rafted and saved 40,000 feet of the jettisoned lumber.

Value saved\$14,000.00

(Others who assisted not before the court)

Libelants allowed.....\$1,000 and $\frac{1}{3}$

the reasonable value of the lumber

rafted and saved by them subsequently.

Time occupied, 30 days.

The Thomas A. Garland, 83 Fed. 1018:

Schooner laden with ice, ashore.

Her position was a dangerous one—shoal water, with a bottom of shifting sand, exposed to any storm which might arise, and protected from the force of the open seas only by the bar, upon which at high tide there was about 8 feet of water.

The only available aid was that offered by the “Rawson”, no nearer help was nigh. Channel narrow and dangerous, surrounded by treacherous shoals of shifting or quicksands.

The services rendered were of a dangerous nature.

Damage to the bitts of the steamer, \$151.90.

The vessel drawn off by the aid of anchors and the tug's power, by surging, in loosening the schooner from the sand.

Value saved—\$8,000.00.

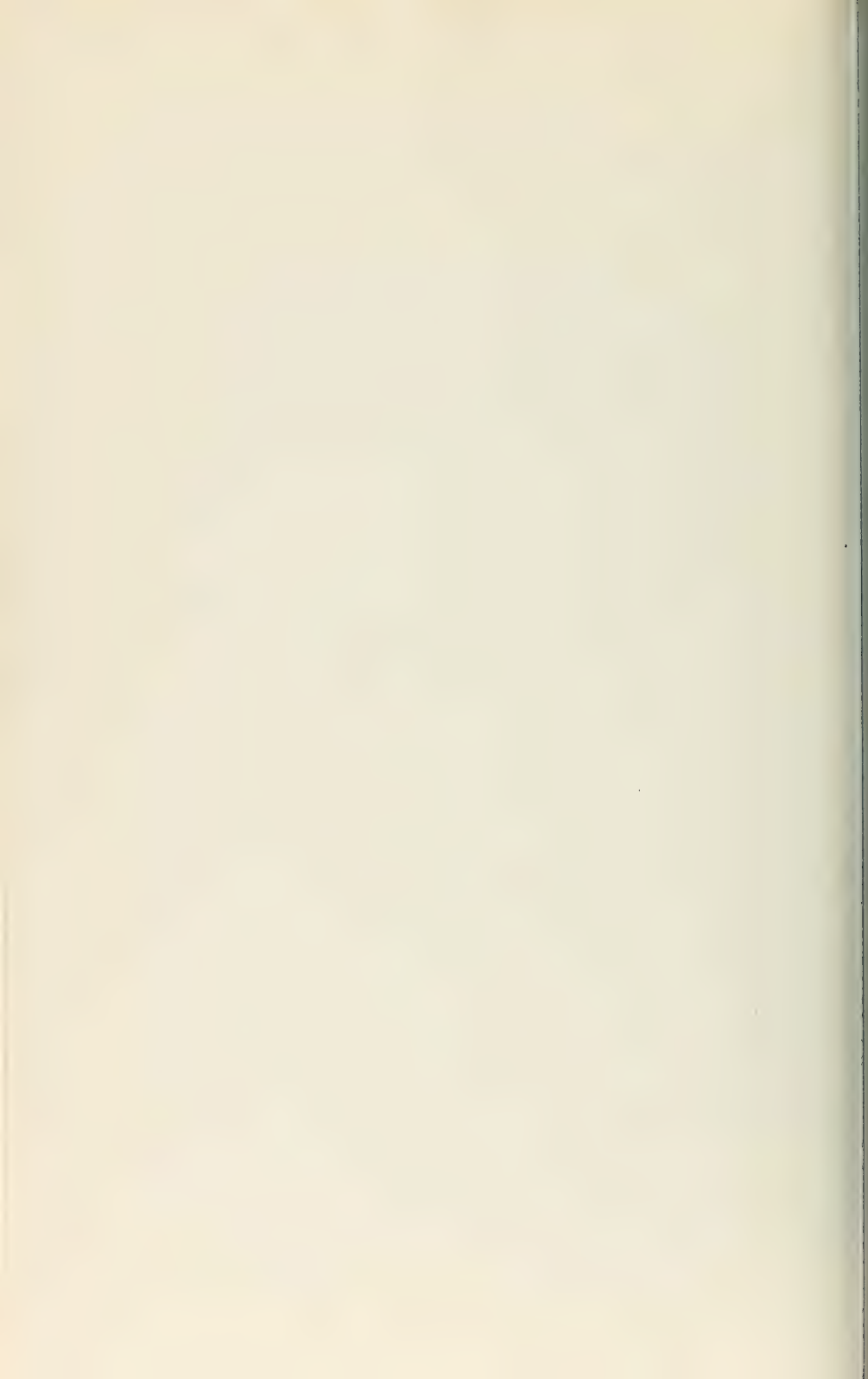
Award—\$500.00.

Respectfully submitted,

NATHAN H. FRANK,

IRVING H. FRANK,

Proctors for Appellant.



IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

THE AMERICAN SCHOONER "HALCYON," her tackle,
 apparel, machinery, boats, furniture, appurte-
 nances, cargo and freight money, and
 J. A. T. OLSON, master and claimant,

Appellants,

VS.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIM-
 ITED, a Hawaiian corporation, owner of the
 Steamer "Niihau," for itself, the officers and
 crew of said steamer and other servants of
 said owner,

Appellee.

BRIEF FOR APPELLEE.

W. O. SMITH,

L. J. WARREN,

E. W. SUTTON,

Proctors for Appellee.

S. H. DERBY,

Of Counsel.

Filed this _____ day of October, 1916.

FRANK D. MONCKTON, Clerk.

By _____ Deputy Clerk.

No. 2830

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said owner,
Appellee.

BRIEF FOR APPELLEE

Appellee's brief in this case has been prepared, as is natural, by its counsel in Honolulu without the benefit of an inspection of the brief of opposing counsel. Owing to this fact, and because of this court's unfamiliarity with the locality of the salvage operations, it has seemed wise to said counsel to treat the matters involved very fully and, as far as possible, to anticipate

and meet appellant's contentions. It is to be hoped also that this method of procedure will, by its comprehensive reference to and summary of the testimony of both sides on the various points involved, relieve the court of much of the labor incident to reading and digesting the rather lengthy record. The facts are detailed with great care in the body of the brief, while at the end thereof, under the heading of "Amount of Award", said facts are stated more generally so as to give the court a clear and compact understanding of the very meritorious salvage service which was performed. A brief addendum to the brief will also be furnished by appellee's local counsel in San Francisco dealing with such points in appellant's brief as seem to require further treatment.

Opening Statement.

The schooner "Haleyon" arrived at Hilo, Hawaii, on January 9, 1914 (Tr. 72; 90, 119), with a cargo of lumber, and was taken to the "railroad wharf" in Hilo Bay where she discharged a part of her deck load, and by the evening of January 12th had discharged about 50,000 feet of lumber out of her full cargo of about 130,764 feet. These figures seemingly do not appear so completely in the record (Tr. 265, 436), but they are from the memorandum agreed upon between counsel in the case which was the basis of the admissions as to values of the cargo, vessel and freight money (Tr. 196), and we assume without question that libellee's counsel will approve this statement.

On the evening of January 12th the schooner lay a little off from the Hilo side of the railroad wharf (Tr. 27, 38-39, 72, 74, 95, 119-120), with head and stern lines running to the wharf on her starboard side (Tr. 27, 38-39, 72, 95, 104, 119-120), and head and stern breast or mooring lines to the first and second buoys from land (Tr. 38-39, 119-120, 135), on her port side (Tr. 27, 72, 74, 95, 119-120, 182). These lines will later be more particularly described, and reference will be made also to the breast lines between the vessel and the wharf. The positions of the buoys are shown on the sketch made by Bruhn (Tr. 182) in evidence as libellant's Exhibit "B" (see Tr. 484).

The small schooner "Ka Moi" was also similarly moored about 40 or 50 feet astern of the "Halcyon", both vessels heading with bows offshore (Tr. 40, 47, 73).

During that day the weather "was looking kind of bad" (Tr. 27), and the storm increased as the evening advanced. Its direction, both as to wind and sea, was approximately from north to south and in practically a direct line with the line of the railroad wharf (Tr. 70, 77-78, 83-84, (183 map), 106). The "Halcyon" broke loose from the wharf between nine and ten o'clock that evening (Tr. 27, 41, 73, 91, 95-96), and began drifting astern with the wind and sea (Tr. 73, 152-153) toward the "Ka Moi". An anchor was dropped in an effort to hold her (Tr. 27, 41, 73, 91, 95-96, 120), but this failed and she drifted back with her stern into the bow of the "Ka Moi" (Tr. 27, 47, 120, 104-105). By slipping off the stern line to the wharf (Tr. 135) and hauling upon the after breast line to the farthest

inshore buoy the "Halcyon" was hove clear of the "Ka Moi" (Tr. 27, 47, 73-74, 96, 105, 120, 135, 81), and then her master, Capt. Olson, dropped her other anchor (Tr. 41-42, 53, 73, 75, 86), and relied upon the two anchors and the breast line to the inner buoy to hold them (Tr. 97, 135). For a time these seemed to hold her (Tr. 120), maybe drifting a little (Tr. 28), but "then the wind blew that time" (Tr. 28), and toward two or three o'clock in the morning she began to drift in again, and "kept working" (Tr. 28-29, 41, 44-45, 75, 120), moving toward the piles at the mouth of the Waiakea River (Tr. 46, 75, 92).

Signal lights or flashes were made by the schooner (Tr. 33, 76, 84, 107-108), but these were apparently unobserved by anyone (Tr. 122, 213, 298, 314).

The distance which the schooner drifted in this direction and her position are matters somewhat in dispute, and will therefore be left for discussion as part of our argument.

One of the "Niihau's" boats, proceeding out of Waiakea River to join the steamer, at about 3:30 or 4:00 o'clock in the morning (Tr. 196, 221-222, 296, 307, 474), passed fairly close to the schooner (Tr. 91-92, 296) and was hailed for help by her (Tr. 109, 122, 296-297, 304, 335). Help was promised (Tr. 297), and the boat proceeded to the steamer to report the matter, and the "Niihau" promptly proceeded to render assistance, as will be described in our argument.

The work of the steamer, summed up in a few words, amounted to sending a line to the vessel in distress, in the darkness of night and in a storm, and towing her

out to deep water in the harbor, but the operation was interrupted by the parting of the hawser. Capt. Bruhn, of the "Niihau", believed at the time that his line had been cut by those on the schooner, and testified that when it occurred he saw a man on the after deck of the schooner, whom he took to be her captain, make a sweeping motion with his hands which Bruhn, interpreted to mean that they were satisfied, and this was immediately followed by the dropping of the schooner's anchor. The steamer, being unable to lay in such close proximity to the schooner, steamed a little further ahead and itself dropped anchor.

Libellee claims that Bruhn knowingly allowed the schooner to drift again, and did not move promptly to her relief.

The libellant claims precisely the opposite, and that, as soon as it was clear that the schooner was drifting and could not hold herself, Bruhn proceeded at once to assist her the second time, and did so without any request or signal from the schooner. The work of the steamer had been going on for a considerable time before the signals were finally put up.

Leaving the argument as to the facts to be presently made, we state further here that the drift of the schooner continued in the direction of the wind and sea, moving more rapidly as she neared the shallower water, the direction having been approximately toward an old boiler of the wrecked "Kilauea-hou" lying on the water's edge about in a line directly south of the outer end of the railroad wharf, as shown approximately on the map in evidence as libellee's Exhibit 1,

referred to on Transcript pages 202 and 206. That she passed outside of the piles this time was doubtless due to the fact that she had been brought by the steamer to a position further out from the west side of the railroad wharf.

The steamer again picked up anchors and circled to a position farther in toward the beach, dropped anchors and swung to them, and, after paying out chain, again despatched her small boat, held by a surf line from the steamer, and a heaving line was thrown on board the schooner, by means of which the hawser was taken on board. The hawser was immediately made fast, and drawn taut by the steamer heaving on its anchor chains, by which means the schooner was drawn around into line again with the steamer and the direction of the elements, and then the steamer held her thus while a second line was sent to supplement the first. By further heaving and steaming, the schooner was gradually worked free and towed out into the harbor again, where, at the request of the master of the schooner, to which was added that of Pilot Mosher, the steamer lay to and held the schooner by two lines all the rest of that day and throughout the following night; and on the following morning, when the storm had abated, the lines were cast off and the steamer went about her own business.

CLAIMS OF THE LIBELLANT.

The libellant submits that the schooner and cargo were in imminent and extreme danger on two occasions in the storm which prevailed during the operations of

rescue, and that, had the "Niihau" not in each instance have gone to her assistance and brought her out of her perilous positions, she would have been wrecked and lost, doubtless with all or most of her cargo as well; also that considerable danger was incurred both as to the steamer and the men who manned the small boat which took the lines to the distressed vessel. On the other hand we have the libellee urging before the court that the services rendered were small and slight, not amounting to more than a towage service on either occasion, and that at no time was the schooner in any immediate danger; that the weather, wind and sea were not so bad as might have been, and, generally speaking, that no special merit was shown entitling the libellant to more than towage compensation. It is even claimed, in the answer of the claimant on file, that whatever danger the schooner did in fact get into, at least on the second occasion, was due to the negligence and "nonchalant" conduct of the libellant's servants, and that, even if the second rescue was in fact a real rescue of the schooner from danger it was from a danger into which she had fallen because of sheer neglect by the "Niihau". The claims of the libellant, as to the elements in the present case which ought to have their part in the consideration of salvage awards, are, we submit, substantiated by the following facts and argument.

Argument.

When word was brought to the steamer of the schooner's trouble, the steamer was lying pretty well

out into the bay (Tr. 214, 307, 335, 385) at her usual anchorage off the end of the railroad wharf (Tr. 197, 214; and see N-1 as marked by Carlson on libellee's Exhibit 1).

Immediately upon being notified of the trouble, Bruhn gave orders to the engineer to get ready to move, and was informed in reply that she was ready (Tr. 197, 335, 474). The small boat had left the Waiakea boat landing at about 3:30 o'clock that morning (Tr. 221-222, 296), and by the time it had come out of Waiakea River and held communication with the schooner and then reached the steamer it was about 4:00 o'clock (Tr. 221-222, 474).

Capt. Bruhn was informed that the schooner was ashore (Tr. 214, 221-222, 297, 307, 335, 474) "off the mouth of Waiakea River" (Tr. 196, 335, 474) and although the libellee denies that the schooner was in fact ashore, the fact remains that Bruhn was by such information called upon to plan his operations to deal with the schooner as being ashore at the mouth of Waiakea River. This required that he should place his own vessel in the best position to approach the mouth of Waiakea River with the line to be sent. He had first to pick up his two anchors (Tr. 197, 214, 335), and then steam over towards and a little to the Hilo side of the end of the railroad wharf (Tr. 51, 110, 197, 215, 307, 335, 336), at which point he dropped both his anchors (Tr. 51, 88, 109, 110, 197, 335-337, 362; and see libellant's Exhibit B), placing them separately and sufficiently apart to make them serviceable for the heaving expected to be done. When so placed the anchors lay between the end of the railroad wharf and

buoy No. 3 counting from the shore (see Tr. 197, 335, and Bruhn's sketch, libellant's Exhibit B). The steamer then swung around to her anchors, and when in line with the wind and sea, paid out chain (Tr. 51, 110, 111, 146-147, 197), about 90 fathoms to each anchor (Tr. 197, 307, 335), and she was thus allowed to drift down stern first before the wind and sea toward the location of the schooner (Tr. 51, 111, 214, 307, 335). Bruhn said that this finally brought the steamer close to the second buoy (Tr. 384); this was perhaps about 600 feet from the schooner (Tr. 213).

Meanwhile, on board the steamer they were breaking out a new coil of 4-inch line, to be used as a surf line in sending a boat to carry a new 6-inch line (Tr. 71, 308, 338) also prepared to be used as a hawser for the pulling (Tr. 305-306, 338), and the same boat which had brought the purser out was used to take the line (Tr. 197-198). The method of operation was as follows: The 4-inch line was bent on to the 6-inch line, and the entire 6-inch line then coiled in the boat (Tr. 197-198, 218, 305-306, 338), and on top of it was coiled the 4-inch line, one end of which was made fast to the steamer (Tr. 305-306, 338). By slacking away on the 4-inch line in the small boat and also pulling on the oars, the boat was carried down backwards toward the schooner (Tr. 198, 206-207, 306), and when the schooner was reached one end of the 6-inch line was passed on board (Tr. 51, 76, 198, 206-207, 338), where it was made fast to the foremast (Tr. 76, 100, 123), and then the 4-inch line, having been attached to the steamer's windlass (Tr. 198, 217-218), was heaved in by the steamer to bring the 6-inch line and boat back (Tr. 198, 218, 306). When

the boat had gotten back and the 4-inch line all taken in by the windlass, the end of the 6-inch line came on board and there was just enough of it to make it fast to the steamer's bitt (Tr. 218-219, 306). This done, the steamer began heaving on her anchors to make the line taut. The 6-inch line was 120 fathoms long (Tr. 218, 308, 338), but, when the slack had been taken in and it became taut, the distance between the two vessels was about 60 or 65 fathoms (Tr. 50, 309, 339, 384).

All of the foregoing was accomplished in about one-half to three-quarters of an hour (Tr. 101, 305, 476), as the steamer began heaving on her anchor chains at about 4:30 o'clock that morning (Tr. 474, 475, 476, 477, 481).

It will be noticed, in passing, that the schooner's mate, Joseph, said that the steamer heaved on the schooner for about an hour before she started towing (Tr. 77). Bruhn said "We hove on that line and brought her up gradually", and "*then*, when we went ahead with her, got it all taut and *started up* with her, hove *in* on our anchor chains the same as I explained to you" (Tr. 382-383). This is significant as respects the question whether or not the schooner was actually ashore or on the bottom at the time,—an issue which we will presently discuss.

When the actual towing out began, the schooner hove in on her own anchors to pick them up (Tr. 31, 44, 76, 92-93, 102, 114, 123, 143), and raised the starboard anchor but lost the port anchor altogether (Tr. 42, 57, 76, 93, 100, 102, 123, 143, 164); and as the schooner gradually moved out, increasing her distance from the in-

shore buoy to which her line was fast, paid out her line to the buoy to its full length and then had to let it go (Tr. 93, 101-102, 123-124).

The steamer gradually worked out with the schooner (Tr. 77, 198-200, 251, 259-260), and the slow work in the teeth of the driving storm was still in progress when the schooner had reached a point about westerly of the end of the railroad wharf (Tr. 50, 51, 54, 151, 199, 219, 316, 333, 340), where the line parted (Tr. 31, 32, 48, 93, 102-103, 151-152, 340, 475, 477) after a tow of some 600 or 800 feet in all to that point (Tr. 77, 81, 103, 125, 142, 219). This occurred between 6:30 and 7:00 o'clock (Tr. 86, 93, 222, 312-313),—nearer 7:00 (Tr. 93, 251, 474, 475, 476, 477),—that is, from two to two and one-half hours for a tow not exceeding 800 feet.

The cause of the line thus parting was not then known to those on board the steamer, and Bruhn thought it had been cut on board the schooner (Tr. 225, 340, 374-375, 413), although it was afterwards ascertained that it had gotten foul of one of the buoys and been cut on it (Tr. 251, 278-279, 340, 374).

Immediately upon the parting of the line the schooner dropped her remaining anchor (Tr. 32, 53, 77, 93, 125, 142, 199, 314, 340, 342), whereupon the steamer, being relieved of the tow and being under necessity of coming to a stand herself, steamed a little further ahead and dropped her own anchors (Tr. 199-200, 223, 263, 342). This point was near the end of the railroad wharf (Tr. 271).

We desire here to go back a little, and deal with the issue of the actual position and danger the schooner

was in when the line was first sent on board early that morning. The libellee makes all possible claims which would tend to minimize the danger, and claims also that the schooner was neither ashore nor in any particular or immediate danger at the time. That the weather was "not so bad", and that seas have been "worse".

In support of the libellant's claims as to the position and circumstances of the schooner when help was first rendered as stated, we refer to the following:

Witnesses for the libellee variously estimate the distance the schooner drifted after she broke from the wharf. Sach said only about a hundred feet and a ship's length more (and the "Halcyon" was only about 130 feet long) until the steamer got a line on (Tr. 44-45); and this is interesting as an estimate of distance when he also stated a little later that she was "a ship's length, about two hundred feet" *from the piles* (Tr. 45). Joseph said the drift was "from that wharf probably six hundred feet",—meaning to the place where she lay *until* 3 o'clock (Tr. 74),—and we note that he did not say from the *end* of the wharf,—so that the presumption is that he meant from where she was lying before she broke loose. In that case she was 600 feet from the wharf toward the piles or toward the old Hackfeld wharf, and 600 feet in either of those directions would have found that schooner not far from where libellant claims she was. Then, if we add Piersen's statement to that of Joseph, that *after that* (from the 3 o'clock location where she was hanging to the buoy) she drifted about 200 feet (Tr. 92), we have it about 800 feet in all.

The course of the purser's boat, coming out of Waiakea River early that morning, took it east of the piles which project beyond the Hilo side of the river mouth (Tr. 204, and see map), and Morton said he saw the schooner "as soon as we got *to the mouth* of Waiakea River" (Tr. 296, 214). This was pretty close, as otherwise it would not have been seen so soon, as it was a dark night (Tr. 109, 214, 216, 303, 307, 308, 311, 326, 476). Being seen, the schooner was hailed, and the small boat passed close enough for words to be shouted and heard in the storm which was prevailing.

That there *was* a storm prevailing, not only from early the evening before, but continuing and increasing through that night and the following day, is clear from the following references:

The direction of the wind was approximately in the line of the railroad wharf, from a little east of north (Tr. 70, 77-78, 83-84, 106, 132, 137, 211, 244, 294, 317, 364) and the sea was running in the same direction (Tr. 60, 70, 78, 132, 211, 264; and see the arrows showing direction of wind and sea on libellee's Exhibit A, referred to in Tr. 84).

It was a strong and heavy wind (Tr. 210-211, 280, 294, 317, 467), blowing high (Tr. 244); a heavy gale (Tr. 316, 323, 364); pretty nasty winds blowing, *the strongest we ever had in Hilo* (Tr. 253); very nasty weather (Tr. 344-345).

Its velocity was variously estimated by witnesses as follows:

Carlson, 40 or 50 miles an hour (Tr. 211);
Lacerdo, 25 miles (Tr. 253) or more (Tr. 274);
Filler, 30 miles (Tr. 294);
Thompson, 35 to 40 miles (Tr. 323);
Mosher, 40 and probably more (Tr. 345);
Bruhn, 40 to 50 miles (Tr. 364);
Olson, 40 miles (Tr. 167).

The boat's crew refused to go again to take soundings unless the boat were held by a surf line (Tr. 309).

Through the night and morning and all of the following day the storm increased (Tr. 36, 77, 132-133, 211, 331), but quieted during the following night (Tr. 211, 376).

The sea was heavy, and a heavy swell was running (Tr. 70, 106, 211, 214, 244, 294, 323, 332, 344-345, 380, 426, 467). A heavy, dirty sea running (Tr. 323, 364); big waves (Tr. 281); very squally (Tr. 226-227, 323). There were breakers in the bay (Tr. 211); waves 4 or 5 feet high (Tr. 258, 278, 426); 6 feet high (Tr. 364); 6 or 8 feet high (Tr. 351-352). Swells that lifted Mosher's launch up and down 8 or 9 feet (Tr. 352). Some of the breakers "went clear over the schooner and over her deckload" (Tr. 211-212, 319, 372-373), with the "Haleyon" at H-2 as marked by Carlson (Tr. 212) on libellee's Exhibit 1 (see Tr. 205). There were 5 or 6 breakers between her and the shore (Tr. 211, 218). Waves were washing high on the beach (Tr. 284); and "you've got to have a heavy gale to make any breaker on the beach at all" (Tr. 352). Mosher had to go on

board the schooner on the starboard side because to have gone astern of her he would have gotten into the breakers (Tr. 357).

Even the libellee's witnesses had to make some admissions: It took them half an hour that night to run the schooner's line to the buoy, and they "had to pull" to get to the buoy (Tr. 106); it was "pretty heavy" (Tr. 106). "It was kind of tough getting alongside that buoy" (Tr. 43). When the line was sent the second time the boat simply paid out the surf line and was carried by the drift to the schooner (Tr. 79). Sach was uncertain whether after the second tow out the steamer was "afraid to hold us" (Tr. 62). That it was "kind of rough" (Tr. 36). Duvel, a witness for *libellee*, said "*the roughest sea in the harbor, in fact, I have noticed since I came here*" (Tr. 447). Olson was afraid the schooner's anchor chain would carry away even after being towed out the second time (Tr. 209, 374).

Olson, who said the weather was "not very bad" (Tr. 132), and as to the wind that he had "seen it worse" (Tr. 167), was in trouble when, on cross-examination, he had to admit that it blew 40 miles an hour (Tr. 167); and, finally, to admit that he had not left his schooner all that day or the following night because the weather was too rough for it to be safe (Tr. 168-170); and, while he tried to intimate that he had wanted to stay on board that day so as to be in charge of his vessel because he was "doubtful about the weather" (Tr. 170), he could not, when pressed, give an answer to the question whether he had not said

to Mr. Nichols that he had failed to come ashore within 24 hours to note a marine protest because he could not safely have done so (Tr. 170).

The purser in the small boat had a considerably better opportunity to judge the approximate distance the schooner was from the piles, as he had just traversed that distance to talk to her, and we submit that his judgment upon it is more reliable than that of one on board the schooner who had *not* traversed that distance. It will be remembered that the boat was proceeding against a head wind and sea as described, and it follows that its progress could not have been very rapid,—a fact which would ordinarily tend to influence the judgment of its occupants that they were a long time reaching the schooner, while, in fact, Morton thought it strange to find her so *close* in (Tr. 304).

The course of the small boat was such that, after it passed the schooner, it came up abreast of the “Ka Moi”, still lying alongside the wharf (Tr. 296). There is no evidence of any moon or starlight, or other lights around, even on the schooner (Tr. 337), except a light away aft in the cabin (Tr. 298), or the wharf (Tr. 385).

Purser Morton said they tried to get as close as they could to the schooner to see what was wanted (Tr. 297), and he said twice that someone on board told him at the time that the schooner *was ashore* and wanted a line (Tr. 196, 297, 304). Morton indicated the approximate position of the schooner by the black dot marked HPM which he placed on the map in evidence as libellant’s Exhibit A, located near the end of the piles at

the mouth of Waiakea River, but, not having attempted to place this dot according to scale (Tr. 299), he independently described it as being about 50 feet *off* the piles (Tr. 298, 299), and from 150 to 200 feet off and abreast of the old "Hackfeld wharf" (Tr. 299). But the night was dark and, not having paid particular attention to relative distances, he could only give his best judgment. He meant 50 feet east of, let us say, the north and south line of the piles, but 100 feet say N. E., from them in the direction of the old Hackfeld wharf (Tr. 299-301), and he drew a rough sketch to show the relative position from the piles and the Hackfeld wharf (Tr. 299-301; and see libellant's Exhibit A).

The loaded draft of the schooner, so far as the record shows, depending entirely upon the testimony of libellee's witness, "couldn't be *more* than fourteen feet of water" (Tr. 46). This may be taken as meaning an admission of possibly as much as 14 feet. In Bruhn's opinion the schooner was touching in $2\frac{1}{2}$ fathoms of water (Tr. 381-382) the first time she drifted in.

No soundings were taken by the schooner in the vicinity of Waiakea River mouth (Tr. 44), but soundings were taken by the steamer, for which purpose the small boat, after having first taken the line to the schooner, was sent back by Capt. Bruhn in charge of the first mate as soon as the boat had returned from bringing the line (Tr. 309-310, 325-326), and the line was made fast (Tr. 325-326). This boat proceeded in the direction of the mouth of Waiakea River (Tr. 310). On account of the rough condition of the sea and the fact

that the small boat had to be held and controlled by a surf line held by the steamer to keep it with head to the sea for safety (Tr. 310, 326), this small boat could not go around the schooner, but took soundings off the schooner's starboard bow and about opposite her mizzenmast, and found about 3 fathoms of water at her bow and $2\frac{1}{2}$ about amidships (Tr. 310, 326, 381), as best could be determined with the "sea running and boat shaking up and down" (Tr. 310). This boat got into the breakers in taking these soundings (Tr. 310, 352). Bruhn's idea in taking soundings was to find if there was any obstruction before he began to tow (Tr. 382), as the bottom there is rocky (Tr. 383).

Other evidence as to the schooner's location, compared with the piles at the mouth of Waiakea River, the old Hackfeld wharf, etc., is as follows:

The scale on the map of Hilo Bay is 1-10,000. Hence 1 inch equals 833 feet. By this scale it is clear that the distance from the extreme outer end of the railroad wharf to the outer end of the piles at the mouth of Waiakea River is just about 1358 feet.

As already indicated in the early part of this brief, the "Niihau" had dropped her anchors between the end of the railroad wharf and the outer buoy, and let out 90 fathoms of chain on her anchors,—say 530 feet, allowing for any slack. When she had sent her line to the schooner and hove it taut the distance between the two vessels was about 60 or 65 fathoms (Tr. 50, 309, 339, 384),—say another 390 feet. Add the length of the "Niihau", say 150 feet (Tr. 414), and that of the schooner, say 130 feet (Tr. 45, 166), and we have a whole

total of about 1200 feet from the "Niihau's" anchors to the *stern* of the schooner (Tr. 384, 390-391). The difference between the distance from the extreme end of the wharf to the piles, 1358 feet, and the total of the chain, line and vessels, 1200 feet, leaves 158 feet which there might have been between the schooner's stern and the end of the piles had she been right in that line. As it was she was a little to the wharf side of the piles, more nearly off the mouth of Waiakea River, and it is very clear from the map, which also shows the depths of the water in feet, that at any such distance toward Waiakea River or toward the old Hackfeld wharf there was not more than $12\frac{1}{2}$ feet of water. With her draft "not more than 14 feet" (Tr. 46), which, we submit, coming as it does from the libellee's own witness and to be taken as most favorable to the libellee, means a possible (and therefore probable) draft of 14 feet, that schooner *was* pretty hard aground. It is not inapt at this point to mention that Bruhn's estimates of distances in the instances where he gave any estimate of distance, may be given pretty fair acceptance judging from his estimate that the railroad wharf was about 800 feet long. By the scale on this map it is just about 820 or 825 feet long. Another point: If, as claimed by the libellee, the schooner was not so far down toward the mouth of Waiakea River, but nearer the railroad wharf, then, if we turn the line of 1200 feet to her stern measured from the steamer's anchors to any point nearer the wharf than the end of the piles, she would have her stern pretty close to the rocky edge along the old Hackfeld wharf, and with a depth of water, if she drew a

full 14 feet, not enough to keep her off the bottom with the seas that were coming in to lift and lower her. Purser Morton said that when he saw her she was rolling (Tr. 304). A vessel does not *roll* materially when riding to her anchor, however much she may pitch. We submit that she *was* on the bottom, and that those on board the schooner told the purser the truth when they said that she was ashore.

The witness Carlson endeavored to mark the schooner's position on the map, libellee's Exhibit 1 (Tr. 202-203), but said it was hard to do. It shows a line toward the piles off the "breakwater" (meaning the line of piles) at Waiakea River. This witness could not assume to state the distance of the schooner from the piles, as he says it was too dark to see it,—and it is here noted that he was on the steamer and was judging by the direction of the steamer and the approximate distance from her anchors. He had not passed over the intervening distance between the piles and the schooner, as had Morton in coming out of Waiakea River, so that his reason for not knowing was a good one. He nevertheless knew that she was "inside of the schooner 'Ka Moi'",—i. e., closer to shore (toward the piles) than the "Ka Moi", and that the "Ka Moi" was off the "entrance" or shore end of the railroad wharf (Tr. 214).

We here wish to call attention to a continuous error in the *depositions* where the reporter has written the word "boulders" and/or "boilers", instead of the word "piles",—the reference of the witnesses being to the

piles at the mouth of Waiakea River (see pages 45, 46, 92).

Capt. Bruhn's sketch (libellant's Exhibit B) shows also his conception of the approximate positions of the piles and the old Hackfeld wharf (Tr. 336-337), and he also marked the schooner's position as best he could (WCB on libellee's Exhibit 2, Tr. 390). In Bruhn's judgment the schooner "must have touched the way she was lying" (Tr. 381). He saw the sea "raising her up and down" (Tr. 383).

In taking soundings as stated, the second mate's small boat got into the breakers (Tr. 310, 332).

The libellee's own witness, Sach, *on board* the schooner, did not believe that the schooner was "very far off",—a ship's length, perhaps two hundred feet, from the row of piles (not boulders),—and he sketched her position on the map (Tr. 45-47). If by a ship's length he meant his own vessel, which we think would have been natural, he would have about 130 feet in mind,—which is not far from the difference between the 1358 and the 1200 feet before mentioned.

Libellee's own witness, Clover, said the stern of the schooner was about 150 feet or 200 feet from the piles and the same from the rocks (Tr. 111-112),—another close figure (at 158 feet) by a similar comparison.

Libellee's witness Piersen said she "ran over the side towards them boilers" (meaning piles) (Tr. 92). Clover said "we had them (the piles) a little bit on the port quarter. I believe if she would have drifted in over there she would have drifted into the creek there" (Tr. 111).

Capt. Olson said it was about 600 feet from the piles and the same distance from the wharf (Tr. 137). He did not say from what part of the wharf, and, as he had drifted from the "Ka Moi", which was moored close to the shore end of the wharf, the scale on the map will show that 600 feet from the *shore* end of the wharf would land him either against the piles or else inside of them right up in the mouth of the river. He could not have been, and he was not, any 600 feet from the piles and the wharf both.

Sach's statement, made as of the time when she had been drifting and her *second* anchor had been dropped, was that the anchor had only 6 or 7 fathoms of chain, and if more was paid out it went slack (Tr. 43-44). From this it is quite clear that her drifting had then *stopped*, and as nothing up until then had *held* her, *she must have been stopped by the bottom*. That second anchor had been down for some time before the steamer took hold. Sach's attempted explanation that this was caused by the steamer's pulling (Tr. 44) is not consistent with any common sense course, as they would not then have been *paying out* anchor chain but rather taking it in, nor is it consistent with his own statement that "we started heaving them up" (Tr. 44). Again we call attention to the testimony of the mate of the schooner that the steamer heaved for an hour before she towed (Tr. 77).

Olson himself even, with his usual indifference to facts, said he *let* this second anchor have "*less than fifteen*" fathoms of chain, and would not give it more because he did not want to go back too far (Tr. 138),—

plainly an indication that she was very "close" to the bottom or the rocks. Notice, too, that he said "*less than fifteen*" fathoms, but not *how much* less. We may therefore rely on Sach's statement that it wasn't over six or seven fathoms of chain given that anchor (Tr. 43-44). In other words, *when* Olson *dropped* that second anchor, he didn't dare let his vessel go back more than 6 or 7 fathoms further. 36 or 42 feet of anchor chain affords little hold. The other anchor had had about 30 fathoms of chain out (Tr. 40, 72), and *that* didn't hold her (Tr. 41-42), because it was after she began to drift again at about three o'clock that the second anchor was dropped (Tr. 41, 73, 91, 95-96, 120). The longer the anchor chain the better the hold, both because of distance affecting the hold on the bottom as well as the extra weight of the chain. Yet with both anchors down she was drifting again (Tr. 75).

One of libellee's witnesses said she drifted "a little", which "little" meant "about hundred or two hundred feet" (Tr. 30),—a real and substantial drift, with two anchors down.

That the schooner was really drifting, gradually if not always perceptibly all the time, is evident, we submit, from the whole situation. She had been lying off the wharf with head and stern lines to the wharf fore and aft, and with head and stern mooring or off-breast lines to the buoys fore and aft, and also had some breast lines to the wharf (Tr. 39, 104, 133-134). Olson tried to put these wharf breast lines out of the case by saying they were not tight but were slacked up, as they were only used in the daytime to hold the vessel close in to the

wharf for unloading (Tr. 134). But the fact is that they were on the vessel, and, although they may have been "slackened up over night" (Tr. 134) and may have been slack while the vessel was held by the other lines, those breast lines came into play when the other lines had broken. The head line, which broke first (Tr. 135), was a 9-inch line (Tr. 39, 135). The stern line to the wharf was also a 9-inch line (Tr. 72, 135). The mooring lines to the buoys fore and aft (Tr. 12, 38, 83) were 5-inch lines. The breast lines, slack perhaps until the other lines gave way, were also 5-inch lines (Tr. 134). The stern line to the wharf was purposely slipped to free the "Haleyon" from the "Ka Moi" (Tr. 135), but all the rest of the lines *broke*, sooner or later, under the stress of the storm, although the stern line to the buoy held longest. An added anchor failed to hold her (Tr. 29-30, 45, 75, 96). The forward breast line to the second buoy held for a time, but "parted in some weather (way)" (Tr. 136), and its parting made Olson run another line from the bow to the inshore (No. 1) buoy (Tr. 75, 130-131, 136), where the stern buoy mooring line was then still holding, which new line was a 6-inch line (Tr. 29, 75, 91, 96, 105, 136). Up to this point the schooner was not drifting altogether stern away from wind and sea but must have been moving more or less quartering before the wind and sea. When that forward breast line to the buoy broke Olson ran the new 6-inch line from her bow to the inner buoy. Until he got it run the dragging anchors must have served to hold her bow up to somewhat the same quartering position, but after the schooner's boat left to run the 6-inch line, and before the boat got to the buoy

with that line from the bow, the line from the *stern* to the same buoy broke (Tr. 75, 96, 120). When that stern line thus broke “of course, when that line snapped she threw her stern around over towards the mouth of Wainaku (meaning Waiakea) Creek. Then we got the second line (meaning the new 6-inch line from the bow). We got that to the buoy; then the vessel seemed to be in a dangerous place” (Tr. 75-76). Then the schooner had the one line from the bow and the two anchors (Tr. 97, 121). Olson then flared lights for help, but it does not appear that anyone saw the signals (Tr. 122, 213, 298, 314). Here we note that Clover said that this 6-inch line from the bow to the inner buoy, last run, was about 400 feet long, but that he had out only about one-fourth or one-half of it (Tr. 121). Upon his own testimony at its worst for the libellant, and best for the libellee, if that line was fast to the inner buoy (Tr. 74, 131-132, 136), and the wind was “strong north-east” and the swells “about the same” (Tr. 132), and that inner buoy not more than 400 feet (if that) from the shore (see Tr. 131) or rocks by the old Hackfeld wharf, and as his own vessel was 130 feet long, then if from a quarter to a half of that 400 feet of that 6-inch line were cut, the schooner *was ashore*, as the map and scale will show.

It was *immediately* after this 6-inch line had been made fast to the buoy and had just been hauled taut that the *steamer's* line came (Tr. 42, 43, 76, 97, 106), and there is even some evidence on the part of one of the schooner's boat crew (Clover) that the port anchor had already gone at the time of the boat's return to

the schooner (Tr. 96, 97, 105); to these facts, add that this port anchor was lost in trying to heave it in and take it up after the steamer had begun pulling on the tow-line (Tr. 31, 76, 77, 143, 164), and that the steamer began pulling on the tow-line at half-past four in the morning (Tr. 474, 475, 476, 477, 481), and we possess a most substantial showing that the schooner, up to that time had not *held* for any appreciable time by anything it had put out. Having broken all lines she had, dragged both anchors, and being only able to give out 6 or 7 fathoms of chain on the second anchor when that was put down, anything more *going slack*, we submit that the showing is clear that she had kept on drifting from the first, and was finally actually on the bottom,—because otherwise she could have taken more chain than 6 or 7 fathoms.

Paulos, the libellant's chief engineer, testified that the "Niihau" began to pull on the taut towing hawser at 4:30 a. m. and that the towing continued with his engines at full speed until "About six-fifty or seven o'clock the line parted" (Tr. 474, 476). The tow covered some 600 to 800 feet in distance (Tr. 77, 81, 103, 125, 142, 219), and the fact that it occupied from two to two and one-half hours strongly supports the testimony of libellee's witness Joseph, the schooner's mate, that the steamer heaved on the tow-line for probably an hour before she started towing (Tr. 77), and of Capt. Bruhn of the "Niihau" to the same effect (Tr. 382-383).

Even on libellee's own contention that she was not ashore, we submit that she was having an excellent

prospect of it in the next few minutes. Olson himself testified "*I drifted all the time until I got that line tied*" (Tr. 138), and the reference was to the 6-inch line run to the inner buoy, from the running of which his boat got back only just before the steamer's line was placed on board (Tr. 97), and until which time the anchors were not holding even if one of them wouldn't take more chain.

Here we will take up the libellee's claim that the schooner began drifting almost immediately after the line parted, and that Bruhn was negligent in that he did not immediately again send another line and keep on with his efforts to get the schooner further out, and, in any event, that he did not proceed promptly when it was or should have been manifest to him that the schooner was drifting again. Therefore it is urged that the second rescue had no merit to call for a salvage award because it was a peril for which the salvor was responsible.

The libellant maintains, on the other hand, that the schooner did not in fact begin drifting immediately, but lay there seemingly all right, for a time ranging, in the estimates of the different witnesses, from 15 or 20 minutes to an hour. Furthermore, there is evidence from libellee's own witnesses, which we will presently indicate, that she did in fact lie there for some time before she was known to be drifting. In any case we submit the showing is clear that when she *did* start drifting her movement was in line with that of the wind and sea, in which direction or line both vessels were lying to their anchors, one ahead of the other,

in consequence of which any drifting would have had to be of a decided nature and extent before it could be determined that she was actually drifting and dragging anchor and in need of further assistance.

We respectfully submit that no one on board the steamer had reasonable cause to believe that further action was necessary on the steamer's part, until a considerably later time than is claimed by the libellee. Bruhn had been towing carefully and well, and he had not stopped and did not propose to stop at the time or place the line parted. He was intending to take the schooner some distance further (Tr. 391-392), but the line parted. What parted it was not evident to him at the time he noted the fact, and we have his own positive statement that immediately after the line parted he saw the captain of the schooner (or a man on the quarter deck whom he took to be the captain) make a waving motion with his arms which he read as meaning that the tow was sufficient from the schooner's point of view (Tr. 341). From this he assumed that his line had been cut on board the schooner, a circumstance which made him try to yell across in the storm to demand why. Seeing the schooner then drop anchor he not unnaturally assumed the schooner's captain was satisfied to stop there,—in other words he was dismissed. It was Bruhn's part to concede the schooner's master the right to control his own vessel. We here point out that Olson did absolutely nothing, after the line parted, to apprise Bruhn that he wanted any further assistance or attention, although a nearby launch came alongside at that very moment, and solely because its master had seen the line part; he asked if Olson *wanted any help*

or to have a line run (Tr. 159-162, 243, 244, 248-249, 252, 253, 265-266, 280, 281, 422-424), and by this launch Olson unquestionably and by his own admission (Tr. 162) could have sent word at once to the steamer, the obvious course, since there were no lines left aboard the schooner.

Libellee urges that, had Bruhn watched the schooner he would have seen that she was drifting again almost immediately. We rejoin, that the schooner had the better opportunity to notice her own drift, as bearings could readily have shown it, while from the steamer a movement directly away in the same line with the direction of the view was certainly more difficult to detect (Tr. 269, 273, 274). The motion was inappreciable to Cantin, who was a *little to one side*, until he took a bearing and watched it, and by his range he could see a *gradual* move only (Tr. 463).

What was *Olson* watching that *he* did not deem it incumbent on him to signal for help again? He said himself that he "seen lots of small launches around the boat" when the line broke, but he did not hail any of them (Tr. 154). And we say further that it should not lie in the mouth of Olson to charge Bruhn with dilatory action nor with culpability for *not moving to help*,—*a course he should himself have taken but which he even deliberately refused to take*, although positively told and warned that the schooner was actually drifting and would go ashore. We refer to the evidence of the whole crew of the gasoline launch operated by the witness Manuel Lacerdo. Lacerdo had seen the two vessels and gone out to the schooner while the towing was still

under way (Tr. 250, 251), and was close up in the launch to the bow of the schooner at the very time the line parted, and he saw it part on the buoy a little forward of the schooner (Tr. 251). He saw the schooner then drop her anchor (Tr. 252), and he went right alongside and offered to take a line from the schooner to one of the buoys to help hold her, and his offer met with a square and repeated refusal, as well as with a flat denial by Olson that his vessel was drifting or needed a line, and the declaration that he (i. e., the schooner) was "all right" (Tr. 160-162, 243-244, 247, 248, 249, 252, 253, 265-266, 280, 281, 422, 423, 424).

Those on Manuel's launch all said that, although Olson declared he did not want to run another line to the buoy, he did ask Lacerdo to go and see if he could disentangle and bring to him the line that had been attached to the buoy (Tr. 244, 248-249, 252-253, 280, 281, 422-424), and that the launch then went to the buoy and tried to get the line there but was unable to do so because it was badly tangled (Tr. 161, 244, 245, 248, 250, 253, 280, 423). They agree further that, while the launch was then at the buoy, holding fast to it and therefore practically stationary there, it was clear to them from their *side view* of the schooner, that she was actually moving backwards, as they could and did use landmarks or bearings which showed her movement. That they called it "drifting" instead of "moving back" is of little consequence here, even though part of that movement may have been due to paying out of anchor chain, or drift, or both. Upon their returning to the schooner to report their inability to get the line loose

they again told Olson that he was drifting and to give them a line to take to the buoy, which request or offer Olson again refused, saying again he was "*all right*" and *did not want to run a line* (Tr. 244, 249, 253, 266, 280, 281, 423, 424).

The crew of the launch were unanimous on these points, and on their cross-examination they withstood every effort of libellee's counsel to modify their testimony to permit a construction that Olson thereby meant, not that he did not have or did not want a line, but that he had no line to run (Tr. 248-249, 265-266, 281, 424). They firmly adhered to their statements that Olson insisted he was not drifting and was all right (Tr. 248-249, 266). If Olson meant that he wanted a line but had none and therefore wanted to get his own from the buoy, we deny his good faith, because he knew, as well as Lacerdo (Tr. 252-253), that the broken piece on the buoy was too short, and that the 6-inch line he had last run early that morning was also too short because he had paid it all out and let the end go. When then told by Lacerdo that he was nevertheless drifting and would go ashore, he replied that he was not drifting (Tr. 422, 423, 424), that his anchor would hold him, or if not it would be all right if he did go ashore (Tr. 253, 265-266, 268-269).

We do not believe that Olson's testimony at the time of the trial accords with the truth of the matter,—the truth being that for a time he *was not* drifting, at least as far as he knew, and that he *then believed* he was not, and therefore he told Lacerdo he was not drifting and was all right. Otherwise, good faith being assumed, he

would have known whether his vessel was moving by dragging or by paying out chain, and, if by dragging her anchor, he would have acted accordingly *at the time*. Let us note here the important fact that, when later called as a witness, Olson pretended to have "no recollection" of any of this (Tr. 160), or didn't remember anything of it (Tr. 160-161, 163), and that, while given ample opportunity to have denied it, he *did not deny it* (Tr. 162), but tried, instead, evasively, to say that he had then meant only that he "had no line",—a version absolutely repudiated by the entire crew of the launch.

It stands out in this case that Olson made absolutely no effort of any kind or at any time to signal or ask for help after the line parted, until when the "Niihau", on Bruhn's own initiative, was already sending the line the second time when the schooner was on or practically on the beach (Tr. 33, 34, 55, 57, 77, 88, 93-94, 103, 116, 201-202, 254, 255, 261-262, 284-286, 326, 332, 342-343, 365, 470, 473). The line was already on its way from the steamer in the small boat when the flag went up (Tr. 103-104, 126-129, 207, 228, 229, 315). We submit that the most indifferent person would have paid attention to a signal of any kind, and any ordinary person would have assumed, as Bruhn did, that a signal would be made if help were wanted. Bruhn's impression as to what Olson wanted was rather the contrary, as he believed he had an affirmative demonstration that the help he had been extending had been pointedly dispensed with. His belief that the line had been purposely cut by the schooner continued until he had a later opportunity, when Olson

came alongside in the pilot's launch, to ask why the line had been cut (Tr. 374, 240).

Even from libellee's side point of view it would be a case of the "pot calling the kettle black", when Olson *now* cries he was neglected and allowed to go ashore helpless and unaided.

Carlson, on the "Nihau", said they were watching the schooner and she seemed to be all right. When he first noticed a backward movement he believed it was natural, as a vessel must of necessity pay out some chain after dropping anchor, and, should it seem advisable, to pay out *more* even later on, if there were any question of sufficiency of the chain already out, for the greater the length of chain the better the hold of the anchor. Carlson said he "naturally thought she was paying her chain out" (Tr. 201), and in this we submit he was correct because both Sach and Olson said they did pay out chain (Tr. 53, 152). Except for that movement, so accounted for to his observation at the time, she did not seem to be moving any, certainly *not dragging* her anchor,—until *a little before eight* (Tr. 200-201). As Carlson put it, "*later*", at about half-past seven or eight o'clock, a quarter to eight (Tr. 200), "I noticed that she was dragging her anchor".

Libellee's own witness, Sach, said that after the anchor was dropped she "*kept on* slackening it (the chain) *all the time*, until probably 60 fathoms were out" (Tr. 53, 486). We submit that 60 fathoms, 360 feet, perforce allowed the schooner to go back a very considerable distance, noticeable to Carlson, who correctly accounted for the movement. It being clear that this

cannot be deemed “drifting”, and certainly not a movement of a character or extent which should have occasioned alarm or concern as to the schooner’s safety at the time, and it being also impossible that Carlson or anyone else on the steamer could have supposed some *further* movement might not also have been due to paying out *more* chain than the 60 fathoms, it cannot be considered that the vessel could fairly *then* have been regarded or even presumed to have been drifting and in need of further help *in the absolute absence of any sign or signal* from the schooner that help was wanted or things were not right, or even that communication was desired. Even libellee’s witnesses admitted the drifting was not immediate. Sach said “we *lay there* and we start to drift” (Tr. 32, 54), but that “she drifted very slowly” (Tr. 33),—“gradually” (Tr. 54-55). Joseph said “*we lay there*, and *after a while* she started to drag” (Tr. 77). Clover said “then she seems to *hold a spell* and then after that she started to drag” (Tr. 103), and by a “spell” he said he meant about 20 or 30 minutes (Tr. 113). Also he said that “she started easy, *very slowly*, to drift toward the beach” (Tr. 113). Even Olson said “gradually” (Tr. 125), and confessed that he “*could not tell exactly* if she drifted right away” (Tr. 152).

To dwell a little further here on this point of the schooner’s movement, we point out that Carlson on cross-examination said that it had seemed to him that the schooner was holding and that she was in a “safe anchorage”,—i. e., safe place to be anchored (Tr. 222). Thompson said the same (Tr. 315). Carlson had heard

Bruhn's shouted protest attempted to be made over to the schooner, demanding to know why the line had been cut (as he then believed), although he heard no answer (Tr. 225, 239-240). Carlson believed it was about *an hour*, more or less, after the line parted, before he noticed the schooner *dragging* (Tr. 226).

Thompson did not know just when the schooner had dropped her anchor but he believed it was about eight o'clock that he noticed her *dragging* (Tr. 315). The schooner was in a line astern of the steamer (Tr. 315, 269).

Lacerdo said her anchor held her a little while (Tr. 269), but then her drifting began,—only “inch by inch” at first (Tr. 269).

As respects the parting of the line, Bruhn's belief concerning it, and his first notice afterwards that the schooner was dragging, and his action in consequence, we have the following to say concerning Bruhn's testimony:

When the line parted, Bruhn's understanding of what had occurred was manifested by his immediate action in “hollering” to the schooner, to a man on the after deck whom he took to be her captain, “What in hell did you cut my line for?” to which he got (or at least heard) no answer (Tr. 225, 240, 340-341, 375). That “just about when the line parted” that man on the foc's'le head “threw his arms out”,—illustrating by raising arms parallel to floor and dropping them down (Tr. 341). That after that he was standing and looking at the “Haleyon”, and “*after a while* I saw her dragging in shore”, and when asked as to the lapse of time

before he noticed this he gave his estimate as about 15 or 20 minutes. Noticing "that she was dragging absolutely then" he started to her,—to get the line ready to run again to her (Tr. 342-343, 361, 394). She did not begin to drag "right off" (Tr. 401).

Bruhn fell short as a witness merely in that he was unable to judge the lapse of time, in which connection we submit that his estimates of time were wrong rather than that he lay idle for a long time, as libellee claims. He said he thought the line had parted a "little after six" in the morning after he had been pulling about 40 or 50 minutes (Tr. 339-340, 393, 400). Then he said he thought it was about seven o'clock when he first saw the schooner drag her anchor (Tr. 300-301). We note, right here, that, although he placed his time practically an hour earlier than the others, both as to the time the line parted and the time the first drifting was noticed, still he had *an hour between the times*,—six to seven, instead of seven to eight.

Mosher saw her first at about *seven* o'clock (Tr. 343), and, although he then saw that she was dragging her anchor slowly (Tr. 344), it is clear that when he got down to the old Hackfeld wharf at about *eight* o'clock she was *still in about the same place*,—i. e., 600 feet inside the end of the (railroad) wharf (Tr. 344). Hence the drift, to *eight* o'clock, was too small to have been noticeable from the steamer. And the steamer's engineer, Paulos, said the line parted only at 6:50 or 7 o'clock (Tr. 474, 478). And *right away* when Bruhn *did* know it, he started to get his line ready while watching her at the same time (Tr. 361, 394, 396-397). He

said "we immediately got our hawser right in the boat" (Tr. 394). He said here again that he had been watching her for about 15 or 20 minutes when he observed her beginning to move in (Tr. 361). It was only when a heavy sea would come in that the dragging was noticeable (Tr. 361). Bruhn's steadfast belief that his line had been deliberately cut and his services dispensed with is here again shown by his inquiry to Olson when the latter came alongside with the pilot after the second tow,—"What did you cut my line for?" (Tr. 225, 239-240, 374), at which time Olson said that he had not cut it but that it had gotten foul of a buoy (Tr. 374). Bruhn's inability to account for the passage of *two* hours, instead of but one, from the time the line parted until she went ashore (see Tr. 393-410), shows, conclusively, when we note all the other testimony, that Bruhn was simply confused in his own mind about the matter of *time*, both as to the clock and the lapse of time, but that he doggedly stuck to his original estimates, perhaps because he had once given them, although it should early have appeared to him that his inability to account for the balance of his "two hours" was because he was wrong somewhere. He said he "never marked the minutes down" (Tr. 398). His very frankness in saying some of the moves "didn't take long" (Tr. 397, 398) shows his confidence that no time was lost. In point of fact the rest of his testimony, as well as that of others, is clearly and positively to the effect that, *as soon as he did notice* that the schooner was drifting again, he *immediately* hove anchors and started to her assistance the second time (Tr. 201, 227, 361, 394, 396, 403), as he followed her right up, getting his lines ready

meanwhile (Tr. 394-397, 403). This he did on his own initiative, without any inducement or sign from the schooner, and despite his belief that Olson had shortly before not wanted his line beyond the point where the previous towing had stopped. Although Olson's own operations required one-half an hour to run his 6-inch line to the buoy (Tr. 42-43, 106), (remembering also that he claimed the distance was short), he wanted the big steamer to get around quicker.

The whole showing is one of immediate and continued action on the part of the steamer when it was once known that help was necessary again. Bruhn showed, on cross-examination, that he had in mind that it was 15 or 20 minues after the line parted before he knew she was drifting again, and that it took him another 25 or 30 minutes to get his anchors up, get the lines coiled in the boat, and get down there (Tr. 394, 397, 398), and we submit that he here accounted for the real space of time,—the hour more or less,—that passed. He said that he “never marked the minutes down”
 * * * “in that space of time we was preparing and moving right along” (Tr. 398). A little time was lost because the men refused to go in the boat with the line until the boat was provided with a surf line (Tr. 399). It was *about half-past eight when the steamer started to pull* (Tr. 404),—a fact which shows that very little time elapsed after the line was started until it had been made fast, the line hove taut, and heaving begun. Getting the line ready in the boat *took time* (Tr. 406). They had to do one thing at a time, and be careful in doing it (Tr. 408), as they were maneuvering in a small

bay, with an unwieldy steamer, considering the area to work in (Tr. 385), and in a heavy, driving storm and “nasty” sea, both driving right to the beach, and all with a necessary recognition of the fact that nothing must go wrong if success were to be attained, to say nothing of what might happen if something did go wrong in an *onshore storm*. Every care had to be taken that each move was safe and sure, and the steamer’s own position carefully secure, not merely for the steamer’s own safety but in order that success might be attained at all. Any miscalculation or slip might quickly have placed the steamer alongside the schooner. Everything *took time*. Steamers cannot be moved like launches, or even as tugs. The navigating area was restricted; the schooner was in shallow water.

At this time we take up the matter of the schooner’s actual position and situation up to the time when relief was thus for the second time extended by the steamer. We submit that the evidence is that she was actually ashore, notwithstanding the denials by some of the libellee’s witnesses. Even were it otherwise, the conditions were such that she would inevitably have been ashore in a few minutes more or less.

Sach said she “drifted very slowly *but she was sure going ashore* if we didn’t get any help and the anchor had no hold”, and he gave 200 feet as his best judgment as to how far they were from the beach (Tr. 33-34), meaning the *land* (Tr. 55, 71). When asked by the court as to how far from the breakers he did not reply, but spoke instead, evasively, of a “ground swell”, and claimed that the mate took soundings and found between

17 and 18 feet of water (Tr. 34),—a depth that was impossible 200 feet from the shore. Later he claimed the breakers were 100 feet further in (Tr. 71). Asked, point blank, by his own (libellee's) counsel whether she struck *shore* he said he didn't think so, as he "didn't hear nothing", nor feel any *shock* (Tr. 36). He admitted they were "dragging anchor then"—when they put the flags up, and all the chain out (Tr. 57).

Lacerdo, who took Mosher out in his launch, had to drop anchor when something went wrong, and he had *only 12 feet* of anchor chain (Tr. 256), and knew that where he anchored the water was only 8 or 9 feet deep (Tr. 256). He judged that the schooner had 9 to 12 feet of water at her stern (Tr. 257). Her bow would go up and down with the swells but the stern did not (Tr. 257).

The witness Joseph said the schooner "kept drifting and drifting right in towards the beach" and when the flags went up "we might have been a hundred feet further from the first line of the surf" (Tr. 78). On the point of distance from the beach he said that the pilot's launch was "right astern of us" and the launch "wasn't a very long distance from the shore" (Tr. 88).

The witness Piersen said "Oh about couple of hundred feet; or may have been more" (Tr. 94). The witness Clover said that when the flags went up they were "close to somewheres around two hundred feet, maybe not two hundred feet" (from the shore) (Tr. 103), and he meant the sand beach (Tr. 116), although he said she was "outside of the *main* breakers" (Tr.

116). And by the "main breakers" he meant "the one that breaks right ashore" (Tr. 116),—a pretty close call to saying that they were outside only of the breakers on the beach, but inside of any others.

Even Olson admitted they were "not very far from the breakers" (Tr. 125), and he insisted throughout that he was drifting right along without a stop,—a situation where the schooner would soon have been ashore if, indeed, not already so, and he is condemned out of his own mouth when on cross-examination he admitted that "she commenced to swing a little, part a little", "beginning to turn broadside when the line came" (Tr. 171), and "until the line was fast your (his) vessel was gradually drifting broadside", and when the line was hauled taut she "commenced to straighten up" (Tr. 171-172).

But on the part of the libellant the testimony is positive that the schooner did go ashore, and this was not dependent merely upon judgment of distance from the water's edge. The position which the schooner assumed after she reached a certain point, from dragging in line with her anchor to cessation of stern movement and continuation of bow movement toward broadside, and the difficulty with which she was pulled off by the "Niuhau" on this second occasion, show conclusively that her stern not only had struck bottom but had gone rather hard aground.

R. W. Filler, a wholly disinterested witness, who had gone to sea and knew whereof he was speaking, said the schooner *struck*, and was gradually broaching to, and he saw her lift bodily and come down, her

spars quivering when she struck, and her bow began to swing toward Wainaku (not Waiakea in this instance) (Tr. 289-290); and he knew the action because he had had two experiences of the kind, and said that it is a known fact that the moment a vessel gets into shallow water she will broach to, in consequence of her stern touching first and the wave action turning her around broadside, and she was then "past the stage of dragging her anchor" (Tr. 292-293). In his judgment the water was 10 or 12 feet deep by the schooner (Tr. 291).

Pilot Mosher, another disinterested witness, who was on the scene at this stage, and went on board the schooner, testified that as soon as he got on board he told the captain she was touching the beach, and that he felt the distinct shock (Tr. 347, 353), and that her position had altered and she had swung more towards the land (Tr. 347). That she "didn't drag any further because her stern was on the beach; the anchor was simply no good to her" (Tr. 350); and "if the 'Niihau' hadn't had any line on that vessel, and her stern in the position it was, within a few minutes she would have swung around broadside to the beach because her anchor wasn't doing any good to her at all" (Tr. 350, 354). Her anchor and chain would never have held her (Tr. 349-350). He said the pounding of the vessel "*indicated to me very forcibly* that the vessel's stern was being lifted and pounded on the beach" (Tr. 353).

Mosher said she was so close to the beach that it would not have been safe for him to have gone around

her stern in the launch as he would have gone right into the surf to do it (Tr. 357), and, in his judgment, from her stern to the beach was not over 150 feet (Tr. 358). Lacerdo said he was *in* the surf when he anchored his launch (Tr. 256) and just as he was previously nearing the schooner a big swell washed over his bow and got in his engine and caused the trouble (Tr. 255-256).

Libellee's own witness, Nichols, while not feeling capable of answering the question of whether she was "on the beach", although he did not think so, nevertheless did not believe that her dragging stopped before the line got to her (Tr. 459); yet, even then, he said "but not so fast as she was when the signals broke out" (Tr. 459);—showing, we think, that the movement of the vessel had at least begun to be impeded by the bottom, and her slower movement was due to her being forced further and harder on the bottom. Nichols admitted she was pointing so that she was "apparently *broadside* to me" (Tr. 460),—and he was on the railroad wharf (Tr. 454, 459).

A. S. Cantin (not Campbell) was a disinterested observer, and in his judgment she was on the beach with her bow pointing toward Hilo Sugar Co. mill, her body line being 15 or 20 degrees to the beach (Tr. 465). He testified also that "when they were pulling her off you could see that she landed on the beach" and spoke of the way she would lift with a wave or swell while they were pulling, and at such times come a little "and that's the only way they got her off" (Tr. 467).

The witness Balding said she was *still drifting in* and going pretty fast, when he took a bearing on her on a red-roofed house near the end of the bridge near the post office, from his position near the Matson warehouse (Tr. 282-284). Libellee's counsel seemed to give much value to Balding's qualified reply on cross-examination that the schooner was drifting all the time until the steamer took hold of her (Tr. 286), but he said also that toward the last her drift was *slower* (Tr. 286), similarly as Nichols did, and stated positively on direct examination that she was touching shore, her stern rising and coming down and bringing up on the beach (Tr. 284-285).

See also transcript pages 365, 370, as to her bow swinging around, in her broadside movement.

Further references to indicate that the vessel was in fact on the bottom, close to the beach and breakers, are the following: Transcript 207-208, 230, 232, 233-234, 238, 241, 255, 257, 319, 321, 322, 364, 365, 370, 410.

The question of the depth of the water under the schooner on this second rescue is disputed to some extent, the libellee naturally claiming sufficient depth to tally with their claim that she did not get on the bottom. Sach said 17 or 18 feet (Tr. 34); so did Joseph (Tr. 85); and Olson said 18 feet "when I raised the signals up" (Tr. 126), which he also said was *before* he stopped drifting.

Sach seemingly did not know the draft of the schooner, but guessed at it, and said it "couldn't be more than fourteen feet" (Tr. 46). Had he dared venture it at 12 feet we think he would have done so.

Joseph put it "probably a little over twelve" (Tr. 85), and we would put the accent on the "probably".

Carlson said that although she may have drawn 12 or 14 feet of water afloat (Tr. 234, 237), she was in his judgment in 6 or 8 feet of water (Tr. 237). Thompson judged the depth at 7 or 8 feet (Tr. 320). Lacerdo, the gasoline-launch man, whose business requires familiarity with Hilo Bay, said the schooner was between 9 and 12 feet, and he was himself anchored right astern of her in 8 or 9 feet (Tr. 256, 257), and his own chain was only 12 feet long (Tr. 256),—and to hold his launch at anchor it certainly was not perpendicular. Filler "surmised" between 10 and 15 feet (Tr. 292); Pilot Mosher believed the depth to be from about 7 to possibly 10 feet at her stern and 18 feet at her bow (Tr. 352, 359),—and he described how the bottom there was rather steeply inclined (Tr. 353, 359). This accords also with Carlson's placing of the schooner's position on the map at H-2 where the map shows a depth from 6½ feet to 8 feet (Tr. 237).

Further evidence of the schooner having been actually pretty hard aground at her stern will presently appear in our presentation of the manner in which she came off. At this point we take up again the second salvage operations of the steamer.

We note, first, that the steamer had gone a little further ahead and dropped anchor after the line parted, and that the schooner after dropping anchor had paid out about 60 fathoms of chain and thus increased the distance between the two vessels, and also that the schooner by drifting still further got out of reach of

any line the steamer could have sent from her then position, especially taking into consideration the continuing drift of the schooner and the time which would have to elapse before a line could be sent at all. The situation therefore necessitated a shift of the steamer's position. The map, with reference to scale, shows that the schooner had only a little way further to drift, considering the 60 fathoms of chain already let out, until she would be pretty well into shallow water, and that the steamer could not have gotten appreciably nearer by merely paying out more anchor chain. And see transcript page 479 as to the line being too short. It was safe and prudent for Bruhn to have allowed, as he did, for further drifting before any line could be sent, and that he took no chance of an ineffectual effort to reach her from that position. Nor could the steamer have drifted back at all without heaving anchor. Moving forward, the steamer hove anchor and steamed a course out and away from the railroad wharf, around toward Wainaku and then inshore again toward the schooner (Tr. 469). At a point on the Hilo side of the outer buoy (Tr. 361), at about the same spot where the "Halcyon" herself had dropped anchor (at H-2) when the line had previously parted (Tr. 361, 362), the steamer dropped first one anchor to which she swung around, and then dropped the other, coming up a little again (Tr. 464, 469), and placing them apart to make them efficient (Tr. 241-242, 469). This done, the steamer paid out 90 fathoms of chain on each anchor (Tr. 228, 362), and then fell back with the wind and sea until she rode securely to both anchors (Tr. 464,

469), after which her final position was stern to the schooner at a place approximately shown by her position No. 3 as marked by Bruhn (Tr. 362) on the sketch in evidence as libellant's Exhibit B (see Tr. 385 and 205, 365).

By this time the schooner was at position H-3 (Tr. 365) and was then commencing to swing her bow around as before stated (Tr. 365, 370).

The 6-inch line with the 4-inch line attached was again coiled in the small boat, similarly as on the first occasion (Tr. 227-228, 363, 457-458), the boat being then alongside (Tr. 399, 441, 457), but not despatched until the steamer stopped moving on account of the danger, otherwise, of having the boat aft (Tr. 408). After a surf line had been provided for the small boat at the demand of its crew who refused to go without it (Tr. 399), the boat was despatched with the line. The surf line was used to manage the small boat and to haul it back after the line was passed on board (Tr. 130, 212), and was necessary because, after the boat should get near the schooner and into the surf, the men would not be able to pull the boat back against the wind and sea (Tr. 367), and as a safeguard to the boat and men in case anything happened, such as being swamped (Tr. 368).

The boat got close enough to throw a small heaving line on board the schooner by means of which the 4-inch line was hauled on board (Tr. 206-207, 228), and, by it, the 6-inch line. Even though Easton and Nichols, for the libellee, claimed that the boat started from the steamer with the line *after* the signal was

put up on the schooner (Tr. 440, 441, 455, 458) they said it was *immediately* after (Tr. 439-440, 441-442, 458), and the greater weight of the testimony is that the small boat was already on its way when the flag went up (Tr. 103-104, 126-129, 207, 228, 229, 261, 315). In any case the line was already coiled in the boat (Tr. 315), and the actual despatching of the small boat was but the last step in the series of moves begun long before by Bruhn on his own initiative, without any signal from the schooner. It was only about five or ten minutes after the small boat started with the line until it was on board the schooner (Tr. 207, 441, 458), and only about another like period of time until the 6-inch line had come on board and been made fast (Tr. 207, 371), whereupon the steamer immediately began to heave the line taut with her windlass (Tr. 371).

It will be remembered that at this time the schooner lay with her bow swung around pointing toward the Hilo Sugar Company's mill, at Wainaku (Tr. 207, 256, 319, 347-348, 365, 370, 371, 410, 460, 465), so much so that Mosher said her stern was toward Waiakea River (Tr. 346), and she was churning up sand (Tr. 208, 230); and from the "Niiban" only her starboard side could be seen (Tr. 208, 319, 460). Carlson said that when she rolled he could see half-way to her bottom (Tr. 238). We here add to what has already been said as to her being actually aground, that, while the schooner had, while dragging, been held in a line with her own anchor and chain, this movement changed when the bottom held her stern. She then began turning broadside toward Hilo (Tr. 207, 241), *but*

leaving her anchor chain extending out in its original direction, which in time became approximately at right angles with the way her bow was finally pointing (Tr. 242, 256). This could only have been possible by a continuing freedom of movement of the bow while the stern held fast. The whole testimony is that up to this point the schooner, in drifting, had been carried directly in the line of the wind and sea (Tr. 152-153, 256, 259, 268, 271, 272, 273, 317, 344, 361, 362, 393, 418 460), directly south by compass (Tr. 317, 344), passing close to the piles (Tr. 254), and in the direction of the old boiler of the wrecked "Kilauea-hou" on the beach (Tr. 33, 55, 88-89, 116, 202, 206, 227, 255, 271-272, 273, 274, 312, 300-301, 465); the location of the boiler having been marked approximately by Carlson on the map in evidence as libellee's Exhibit 1 (see Tr. 206). Lacerdo had been watching the schooner drifting, and said she passed about 200 feet off the piles (Tr. 254), and when she put up the flag she was perhaps 3000 feet from the piles toward Hilo (Tr. 255); and that her position was then about 200 feet from the beach (Tr. 255). He also said she was listing and turning toward Wainaku mill, with her anchor straight out *at right angles* from her (Tr. 256), and the seas struck her only on the starboard side (Tr. 259). Also that she would lift with the swell and drop down part way with the swell and then stop while the swell itself would fall lower (Tr. 257-258).

Under the conditions thus indicated, the second pull by the steamer consisted first in a careful tightening of and straining on the 6-inch line (Tr. 208, 212

290-291, 371), the steamer heaving on her own anchors for the purpose (Tr. 290-291, 371), until, with the aid of the swells which lifted the schooner at intervals, her bow was gradually worked around until the schooner was again in line with the wind and sea and her former line of drift, again heading off shore and toward the "Niuhau" (Tr. 260, 275, 321, 372, 411). In Mosher's opinion, although he himself hove in on the schooner's outlying anchor as soon as he got on board (Tr. 356) with the idea of helping to get her bow out again, it wasn't materially effective because "our anchor was going right through the sand. I don't think it was doing any good" (Tr. 357). Of course it *helped*, for it weighed 1800 or 2000 pounds (Tr. 73, 57, 143), but it wasn't holding. The bow having been brought around, the heaving was suspended and the vessel held thus while another line, a 7-inch line, was also sent to the schooner in the same way as the first and also made taut (Tr. 25, 208, 231, 320, 333-334, 372). Sach's reference to a "100-ft. pull" (Tr. 65) must have been to the time they stopped to run the 7-inch line. Both the 6-inch and 7-inch lines were then made fast to the bitts and brought to an equal strain (Tr. 372, 407, 411). When the lines were taut the two vessels were about 60 fathoms apart (Tr. 420). Then, by heaving on her anchors (Tr. 208, 212-213, 259-260, 291, 328, 407), and steaming on her engines, advantage was taken of every bit of slack that could be gotten on the lines, by taking in links of the anchor chain as the slack came with the schooner's giving with the swells (Tr. 320, 372-373). For a time the vessel did not otherwise move appreciably,

if at all (Tr. 232, 233, 260, 373), but, after consistent steady pulling, she very gradually came (Tr. 208, 232, 233, 260, 291, 321, 373, 407), and finally came free.

Then the steamer hove up her anchor and moved steadily and smoothly along with the schooner out into deep water (Tr. 35, 65, 89), and, at a signal from the schooner (Tr. 208, 373), the steamer dropped anchor when at a place near the "Enterprise" (Tr. 61, 208-209, 351).

The operation of rescuing the schooner on this second occasion took considerable time, from which it is clear that it was not a case of towing out a vessel free of the bottom. In Lacerdo's judgment it took in all an hour and a half of pulling (Tr. 275-276). Thompson said it was probably half an hour before she started to move (Tr. 322), Easton took the time the tow was over,—10:15 by the clock (Tr. 440), which shows the last tow took $1\frac{1}{2}$ hours, and could not have actually begun before 9 o'clock. By Nichols' time taken by the watch and noted down, and by Mosher's time noted by a clock on the waterfront, the distress signal went up at 8:35 o'clock (Tr. 455, 458-459, 345), which again supports our contention that it was eight o'clock, not seven, when the steamer moved for the second rescue.

Although the whole operation took time, it had to be done steadily and surely. A break would have been disastrous. Bruhn had had experience, and we are not without a *favorable* criticism of his course in this case. Capt. Filler was an old sea dog and had had experience in working on stranded vessels, and he took note of the very gradual way in which Bruhn

worked the schooner off (Tr. 290-291, 295), and, as a witness, expressed his opinion of the seamanship shown by Bruhn by saying "I remember at the time I admired the fellow's seamanlike way of doing things" (Tr. 295).

The towing having thus stopped, the schooner also dropped her one anchor (Tr. 61, 209), and, when it was seen that it wasn't holding (Tr. 209), the master of the schooner, Olson, accompanied by Pilot Mosher, came from the schooner to the steamer in a launch, and stated that the schooner had lost one anchor and had but one remaining and he was afraid his chain would carry away, for which reasons, and in view of the heavy storm still prevailing, he asked Bruhn to hold onto the schooner until the weather should moderate, to which Bruhn agreed, stipulating only that he be allowed first to shift his own position to a more satisfactory one (Tr. 174, 209-210, 351, 374). This done he held the schooner by two lines all of the remainder of that day and throughout the following night (Tr. 66, 210). At about seven o'clock the next morning, January 14th, the weather having abated, the lines were cast off and the schooner thereafter rode safely (Tr. 175).

Although the "Niuhau's" lines were finally cast off on January 14th, the day following the rescue, the weather continued to be so rough that Capt. Olson did not venture to leave the schooner and go ashore to note a marine protest until the *succeeding* day, January 15th (Tr. 168-170), for the admitted reason that he could not have safely left the ship prior to that time (Tr. 170). The Marine Note of Protest (libellee's

Exhibit No. 3, Tr. 490-492), made as it was on January 15th, at a time when the occurrences were still vividly fresh in Capt. Olson's mind, and two days before the filing of the libel and issuance of monition herein, contains some extremely pertinent statements, as to the danger to the schooner on both occasions and as to the time when he observed her to be in danger after the first tow-line parted.

With reference to the danger before help first came from the "Niihau", he says (Tr. 491): "The starboard anchor was let go, but through poor holding ground the anchor failed to hold, *and the vessel was gradually drifting ashore.*" After the tow-line had carried away and the schooner had anchored "*at 8 a. m. it was seen that the vessel was drifting ashore fast.*" This statement differs very materially from his subsequent deposition that the schooner gradually drifted all the time after the dropping of the starboard anchor (Tr. 125, 155).

Furthermore, "at 9 a. m. Tuesday morning the steamer 'Niihau' again got 2 hawsers fast aboard" (Tr. 492), a lapse of time of only one hour from Olson's realization at 8 a. m. that his vessel was fast drifting ashore. Subsequently, in his deposition, in connection with his statements that the schooner was continually drifting from the time when the tow-line parted (Tr. 125, 155), he complained that he was waiting for a line for over two hours (Tr. 154-155), and that "There was nothing done from half-past six to close to nine o'clock. There wasn't a thing done" (Tr. 126). Olson, therefore, at a time when he was

performing his duty as a master mariner in noting a marine protest of the then but just terminated rescue of his vessel, and before any question of litigation of salvage arose, voluntarily stated under oath that the schooner had twice been saved from drifting ashore, and that the interval between his realization of the second danger and the *making fast* of the two hawsers from the "Niuhau" was one hour.

The marine note of protest also discloses another instance of Capt. Olson's apparent deterioration of memory. In his deposition, he dismisses the collision of his vessel with the schooner "Ka Moi" by the brief statement that "we drifted astern until we touched the little schooner" (Tr. 120), while in the marine note of protest he averred that "the vessel dropped down on top of the schooner 'Ka Moi', which was moored astern of us alongside of wharf, carrying away his flying jib-boom jumper stay, also smashing our small boat and after taffrail, and breaking the davit fastenings" (Tr. 491).

Coming now to the Surveyor's Report and the Final Report of the Board of Survey (libellant's Exhibits "C" and "D", Tr. 485, 489), it appears that the hull of the schooner, in several places, was in extremely poor condition owing to decayed timbers (Tr. 485) and uncaulked planking above the water line (Tr. 486). The mizzen-mast was rotted half way through (Tr. 485), while the keelson and sister keelson were "in as nearly as bad condition as the timbers" (Tr. 485), and a piece of the keel about five or six feet long was gone (Diver's Report, Tr. 488).

The inevitable conclusion from these facts is that the schooner, with weakened keel and keelson, *would have pounded to pieces in the breakers had she not been rescued by the "Niihau"*. The court says in its opinion (Tr. 489): "The evidence in the case shows that the schooner was old and in a weak condition from age and decay." And the court makes the unequivocal statement (Tr. 495): "I am convinced from the evidence that on both occasions the schooner was in great danger of going ashore and of becoming a total loss if she had gone ashore."

The Final Report (Tr. 489) shows conclusively the success of the salvage operations, for the schooner was rescued before she had been damaged to any extent, and the few repairs which had been necessary,—the caulking of the planking above the water line, the strengthening of the mizzen-mast, and the repair of the channel plates (Tr. 489) were judged sufficient, together with the (second) Diver's Report (Tr. 489-490) to the effect that the bottom was in seaworthy condition without repair, for the board's conclusion that the schooner had been made "reasonably safe to undertake the voyage to the Pacific Coast" (Tr. 489).

The entire situation is thoroughly summed up in the opinion of the court below (Tr. 497-498):

"The case presents itself to my mind as one of the most satisfactory cases of salvage on the part of the salvors that has appeared in this court. The agents of the libellant, upon being informed of the danger of the libellee, promptly came to her assistance in the darkness of the night, under circumstances of some danger to its steamer, and removed her from her dangerous position to a safe

one in the harbor, or which would have been a safe one if the libellee had been equipped with her two anchors. As soon as the agents of the libellant noticed that the libellee was drifting again they began preparations for her relief, and continued such preparations until they were ready to send her a tow-line the second time, at which time the libellee was in a dangerous position and, without the relief which was given her, was in prospect of becoming a total loss. I cannot find from the testimony that there was any neglect or inexcusable delay on the part of the libellant's agents.

"The salving methods were the best, and were carried out with skill and courage and resulted in the entire deliverance of the libellee."

AMOUNT OF AWARD.

The trial court stated in its opinion that in view of the circumstances, these being that the ship was in the greatest danger and was, in the court's opinion, rescued from total loss, and that the danger to the cargo was considerably less (Tr. 499), but that "In any case, the danger to the cargo was considerable" (Tr. 499), it would award to libellant one-half of the \$1500 stipulated value of the schooner and one-third of the \$6381.85 stipulated value of the cargo including insurance and freight money (Tr. 195-196). The value of the "Niihau" was stipulated to be from \$45,000 to \$55,000, and she carried a master and a crew of 37 men (Tr. 461). The salving operations were performed promptly and with complete success. The trial court stated that the case was one of the most satisfactory cases of salvage on the part of the salvors that had appeared in that court (Tr. 497), that the

uncertain time merely approximating two hours, which elapsed between the breaking of the tow-line after the first rescue and the delivery of a towing hawser to the schooner on the second rescue, did not appeal to the court as being a very substantial basis for libellee's contention of inexcusable delay, in view of the thoroughly substantiated testimony setting forth the prompt, efficient and successful preparations made for the second rescue as soon as the "Niihau" observed that the schooner was drifting (Tr. 496-497); that, far from there being any neglect or inexcusable delay, "The salving methods were the best, and were carried out with skill and courage and resulted in the entire deliverance of the libellee" (Tr. 498), and that there was considerable danger to the salving steamer on both occasions (Tr. 497, 498).

It is to be noted that this case emphatically differs from the not infrequent cases of importunate salvors waiting to take instant advantage of an unfortunate vessel's necessities and to force their oftentimes deliberately and histrionically exaggerated assistance upon her, with a canny eye in the direction of a responsively inflated award.

The "Niihau" was not a salvage vessel nor engaged in the towing business, but a freight steamer, lying safe at anchor in a heavy gale, with steam up and engines ready (Tr. 474) to depart upon her lawful occasions, as she was to sail very early that morning, at about 3:30 a. m. (Purser Morton, Tr. 296) or at about a quarter to five (Chief Engineer Paulos, Tr. 474).

Far from soliciting to assist the schooner, of whose plight her master and crew were ignorant, her purser's boat responded as it passed to a shouted appeal for help from the schooner, accompanied by the statement that the schooner was ashore and wanted a line (Tr. 297). Ready to sail as the "Niihau" was, her captain, upon receiving this appeal and discarding his regular business, responded immediately to the emergency, getting a tow-line ready and sending back the same boat which had just brought the purser, through the storm, a gale so severe that the boat's crew refused to risk their lives a second time without a surf line (Tr. 309, 326, 399). Meanwhile, the steamer raised her anchors and steamed ahead cautiously in the dark and came in between the railroad wharf and Buoy No. 3 (Tr. 336), and there anchored at the point marked N-2 (Tr. 337, 340, 390). This advance was one involving considerable danger to the steamer because of the possibility of entangling her propeller with the tow-lines (Tr. 498, 497), and because of the equally present possibility of knocking off the blades of the propeller against the buoys (Tr. 376-377) and of the steamer's swinging and coming into collision with the buoys (Tr. 385-387, 414).

Anchoring and paying out ninety fathoms of chain the "Niihau" dropped back toward the schooner, received the tow-line back on board from the boat, and steamed at full speed ahead for more than two hours, pulling the schooner off the beach and out to the end of the railroad wharf. During this maneuver there was constant danger of her engines breaking

down under the heavy strain, for the lumber loaded schooner was almost as large a vessel as herself ("Haleyon", 120 to 130 feet long; "Niihau", 150 feet long), and such a breakdown at the height of the storm would have wrecked the "Niihau" in her turn on the beach (Tr. 334, 498).

Furthermore, and with prompt and most efficient caution, the "Niihau's" captain had, immediately upon making fast the tow-line, sent the boat back, *this* time with the surf line demanded by its crew, to take soundings around the schooner before he should begin to tow, in order to ascertain if there was any rock or other obstruction to the towing (Tr. 382).

As soon as the tow-line parted the steamer dropped her anchors, remaining at that anchorage both because Capt. Bruhn had noticed that the schooner had but one anchor, and because the gale was so heavy that he thought it advisable to stand by. As soon as the steamer observed the drifting of the schooner, preparations were made to go again to her rescue, and another tow-line was sent by a boat (again provided with a necessary surf line), and the "Niihau" raised her anchors and steamed in as close as she dared to the "Haleyon" on the beach, and again towed the schooner out of danger. Again the strain upon the "Niihau" was very severe, and she was exposed again to the dangers of breaking down her engines and of a line fouling her propeller (a danger to which she was *actually* subjected at the time when the first tow-line parted), in which event she could not have used her engines and would

inevitably have been swept on the beach by the gale (Tr. 324, 377-379, 498).

Turning next to the danger to the officers and men of the "Niihau's" crew, who made the salving of the "Halcyon" possible by taking heavy tow-lines to the schooner in one of the "Niihau's" boats (propelled by *oars*, not by an engine), it is to be noted that they made four absolutely necessary trips during the height of the heavy gale. The first one was made with the first tow-line at a few minutes past four in the morning, and without the partial assistance afforded by a surf line only because Capt. Bruhn "at that time didn't know the danger that there was" (Tr. 416; see also p. 369). The second was made immediately upon the return of the boat to the "Niihau", with the end of the tow-line, for the wise purpose of taking soundings to determine whether there were any rocks or other obstructions around the schooner to prevent the salvage operations, or to necessitate their being undertaken from some other position. On this second occasion, as on the following two trips, the boat was provided with a surf line because "The crew refused to go in there without a surf line. It was dangerous" (Tr. 309). Only two soundings were taken, off the bow and forward of the mizzen-mast, because "We was anxious to get out of there as quick as we could", as Mate Thompson frankly stated (Tr. 310). "She was in considerable danger because if that boat capsized that would have been the last of us" (Tr. 311). While the regular crew of this boat was five men (Tr. 323), on all three trips following the first the mate carried

a crew of eight or nine men to double-bank the oars (Tr. 312, 323, 327), and, even with that increase in power, it required a heaving in of the surf line on the steamer's winch to bring the boat back to the ship against the wind and sea (Tr. 312). The third and fourth trips were made, one at the beginning of the second salving operation, the other as soon as the schooner had been pulled off the beach (Tr. 320), shortly before nine o'clock in the morning (Tr. 480, 492), and the boat experienced even rougher and heavier squalls as compared with those during the first salving operation (Tr. 331, 417).

There was danger of capsizing, or of swamping, on *all* these trips, involving the possible loss of the boat, the danger of men getting caught underneath the boat, of getting hurt and disabled by being swept against it, of the boat's possible destruction as a result of being hurled by the heavy seas against the schooner or of getting under her head gear, and finally the danger of loss of life in any of these events. Thompson, for instance, the mate who had charge of the second and third trips, confessed that he could not swim (Tr. 323, 327-329, 331, 333, 368, 377). That serious danger to the boat and her crew existed cannot be doubted, and there is no testimony to the contrary.

The *schooner* was rescued twice from total loss solely by the indefatigable efforts of the libellant's agents. That she would have been a total loss in all probability is the unanimous opinion of the three disinterested expert witnesses in the case, all of whom qualified as such, and all of whom were also eye-witnesses of the

second rescue. They were Capt. Mosher, the harbor master, who took charge of the schooner during the second salving operation, a witness for libellant; Capt. Filler, holding a master's license, called as a witness by both sides; and Capt. Duvel, also holding a master's license, a witness for libellee. Capt. Mosher, who boarded the "Halcyon" in the performance of his duty just after the 6-inch line was made fast, and before the second tow began—the only one of the three expert witnesses who was on the spot—testified repeatedly that as soon as he got aboard and went forward he saw that the "Niihau's" line was fast and *felt* the shock of the schooner pounding on the beach, and so informed the schooner's captain (Tr. 347, 349, 350). This testimony was unshaken on cross-examination (Tr. 353), during which he gave it as his opinion that the "Halcyon" was a very old vessel and that, considering the weather as it was the following day, she would not have lasted throughout that day, but would have broken up, if the "Niihau" had not rescued her (Tr. 354-355), and that the cargo would have thereupon fallen out and part of it drifted to a point ashore, "How much of it would have drifted there, it's pretty hard to say" (Tr. 355).

Capt. Filler observed the schooner ashore and pounding and swinging broadside to the beach (libellant's witness, Tr. 290), and, when called as libellee's witness, gave his opinion that the "Halcyon" (if not rescued) would have swung broadside to the beach and pounded until absolutely unseaworthy, and that, assuming that she was a pretty old vessel, "Three or four hours

would seal her fate'' (Tr. 426-427). Libellee has made much of his opinion that, in the face of subsequent conditions, he did not believe the vessel would have *gone to pieces*, although the sea was rough enough to render her unseaworthy (Tr. 428), but the trial court itself comprehensively brought out his further opinion (one which completely nullifies libellee's argument below that the witness had meant that the ship would not have been a total loss) to the effect that, without breaking up, a vessel can be so badly injured by the pounding of the sea, or can be so imbedded without injury in the sand (and this was a sand beach, Tr. 354), as to be a total loss. Capt. Filler also testified that if the schooner had broken up it would have been possible, in his opinion, to save the greater portion of the cargo of lumber (Tr. 429), in more or less damaged condition (Tr. 430), while "Some of it might go straight to sea" (Tr. 433).

Captain Duvel, libellee's expert witness, testified that, if not rescued, the "Halcyon" would have gone broadside onto the beach and keeled over, and that if the rough weather had continued long enough she might have broken up, and "it might have taken a week" (Tr. 446-447), or that, assuming the weather had subsided to the condition existing when she came back to the wharf—"smooth, smooth weather"—she might, in his opinion, if she had gone ashore unrescued, have filled with water and sunk, or she might have become imbedded in the sand and "she might have been there today" (Tr. 448). All this was on his *direct* examination by libellee's proctor. As to the cargo, he believed

it could have been saved if the vessel had become imbedded in the sand, although he had never had any experience in the salving of lumber cargoes (Tr. 449-450).

We will now return to the sequence of events after the "Niihau" had for the second time towed the "Haleyon" out of danger. Both vessels then anchored in a safe anchorage, and, Harbor Master Mosher advising Capt. Olson that his anchor was not holding, and would not hold in that gale, they both went over in the small boat to the "Niihau" and asked if Olson could have a line on board to hold the schooner during that day and the succeeding night, to which Capt. Bruhn assented (Tr. 174, 351, 374). The "Niihau" stood by, holding the schooner in safety, until about 7:30 a. m. on January 14th, when the weather had moderated a good deal (Tr. 175), and Olson admits that he did not even then ask to have the line let go but that the captain of the steamer "called to me to let go" (Id.).

The errors alleged in the assignment of errors herein (Tr. 511-515) have already been thoroughly argued in this brief, with the exception of the 11th and 12th. The apostles on appeal themselves answer the 12th alleged error. The claim of the 11th alleged error, that the libellant's services were performed solely pursuant to a contract for the towage of the schooner, is utterly absurd and wholly untenable. There is not a scintilla of evidence, not a hint of the possibility of inference, that any contract was made. To suggest the compensation of the libellant on a towage

basis is either superb assurance or the expedient of desperation, probably the latter. The libellant is emphatically *not* in the towage business; it is a common carrier operating its freight and passenger steamers on regular schedules in the inter-island trade, and the very regularity of that service is an important element of value in its business as a common carrier serving the public, and any interference with that element necessarily connotes inconvenience to the public and loss to the carrier. The "Niihau", as shown by the testimony of her purser and chief engineer, was about to sail on her public business when the appeal for help came, and she delayed her voyage from twenty-six to twenty-eight hours, as appears from the evidence. To clothe this alleged error with facts, to say that the "Niihau", lying safe at anchor and ready to begin her voyage at dawn, was lured into seeking a towing contract with a schooner lying in the darkness among the breakers on a lee shore, risking her master's license, her own safety and the lives of her boat's crew in order to pick up a tow, is to annihilate the alleged error.

The coasts of the islands comprising the Territory of Hawaii are uninviting and dangerous, guarded by precipitous cliffs and living coral reefs. There are only two commercial harbors in the group which are ordinarily reasonably safe in all weathers, Honolulu and Hilo, and yet this very case occurred in Hilo Harbor! Nevertheless, the very considerable volume of traffic in the territory must be carried almost exclusively by sea, whether inter-island or with any

Pacific mainland. The perils of navigation are very considerable,—witness the numerous cases of stranding in calm weather upon the reefs,—and an attentive appreciation of those perils, and the consequent weighty importance of the encouragement of prompt and efficient salvage of vessels in distress, is respectfully urged upon this court. Attention is directed to the many cases of salvage occurring in the waters of Florida, the danger and extent of whose coral reefs have caused the federal courts to recognize that a higher scale of awards for successful salvage operations should obtain there than elsewhere. Hawaii has not only equally numerous and dangerous coral reefs in proportion, but great stretches of no less dangerous coastal cliffs as well.

In this case the value of the property salvaged was exceedingly low. It is a well settled principle of salvage law that in such cases a far higher percentage is to be awarded to the salvors than in cases where the salvaged value is large, for the obvious reason that otherwise the salvors cannot be adequately compensated.

See

24 Encyc. Law, 2 ed., 1210 and cases cited
in Note 4;

35 Cyc. 754.

In *The Blenden-Hall*, 1 Dods. 414, the court says:

“In fixing a proportion of the value the court is in the habit of giving a smaller proportion where

the property is large and a higher proportion where the value is small; and for this obvious reason, that in property of small value, a small proportion would not hold out sufficient encouragement; whereas, in cases of considerable value, a small proportion would afford no inadequate compensation."

In cases of very small values, therefore, awards of 50% or 33⅓% are by no means unusual.

See

Note to The Lamington, 86 Fed. at pp. 685-692;
The Nathan Hannan, Fed. Case No. 10,029;
Tyson v. Prior, Fed. Case No. 14,319;
The Penobscot, 103 Fed. 205 at p. 208.

In fact, in some instances of small values, the *whole* of the property salvaged has been awarded to the salvors.

24 Encyc. Law, 2 ed., 1214.

Moreover,

"Where salvage services are rendered by merchant steamers they should be favored in determining the amount of the award, and care should be taken not to establish a precedent through insufficient remuneration, which would tend to discourage merchant steamers from rendering assistance at sea when there is real or apparent danger."

Id. 1206 (and see cases there cited).

As this court probably knows from past cases, the steamers of the libellant, plying their passenger and freight business between the various Hawaiian ports, are in many instances the sole hope of distressed mariners, for there is no other line which regularly

traverses those dangerous waters. The libellant, therefore, should be liberally rewarded for giving up its regular business and assisting vessels in trouble, and especially so when it renders services to hulks like the "Haleyon" in "a rotten and water-soaked condition" (Tr. 485), whose floor timbers were "in such a rotten state, as to enable us to drive a crowbar clean through them without the slightest exertion" (id.). That such a vessel should be salvaged in practically an undamaged state constitutes an achievement of high merit. If, however, the present award be substantially reduced, and the appellee be compelled to pay the costs in this court, it is very apparent that there will be practically *nothing* left to it to reward it for said achievement.

We believe that the facts show conclusively that the award was moderate and entirely reasonable under the circumstances existing in this case, and in view of the small value of the property salvaged. No suspicion of personal interest, no pause for negotiation, detract from the immediate response to the call from a vessel in distress, and the willing and protracted efforts to rescue vessel *and crew*, efforts necessarily involving considerable danger, finally crowned with complete success, and later recognized by the award of a commensurately reasonable amount of money for salvage services, constitute a sincere encouragement to that ready, democratic and unselfish spirit of assistance to

vessels in distress, the fostering of which is the basis of the theory and practice of salvage awards.

Dated, Honolulu, T. H.,

October 4, 1916.

Respectfully submitted,

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(ADDENDUM FOLLOWS.)

ADDENDUM IN REPLY TO APPELLANT'S BRIEF.

As was to be expected, the brief for appellant attempts to minimize the salvage services performed in this case, and, by an ingenious molding of *part* of the evidence, in utter disregard of other parts, to establish negligence on the part of the "Niihau" in not undertaking the second operations sooner. Practically everything that is said is fully and completely answered in the foregoing brief, but a few words may be added.

Counsel for appellant gains little in trying to place the "Halcyon" further off shore than she really was on the first occasion. He detaches certain evidence from the record to establish this, but the *complete* statement of the testimony in our brief will readily enable the court to get at the truth of the matter. He says that, if the "Halcyon" had dragged much, she would have parted her line to the buoy, but he forgets that the line was *400 feet long* (Olson, p. 131) and the buoy was certainly not more than 400 feet from the shore. We also do not know where counsel gets his warrant for referring to the buoys as "flat wooden boxes", which we do not think the record shows, and which (without positive knowledge on the subject) we believe to be incorrect. The danger of fouling the buoys and entangling the "Niihau's" propeller on that dark and tempestuous night was undoubtedly a serious one and it cannot be breezily eliminated by a few well chosen words.

Appellant also attempts to minimize the *very great* danger to the "Niihau's" small boat, because she came

safely out to the steamer on her first trip without a surf line and also made her first trip to the "Halcyon" without such a line. We might remark, in answering this argument, that on the first trip the boat had simply her *regular* crew of five men and was not hampered by carrying a hawser, while, on the initial trip to the "Halcyon" the boat, though not having a regular surf line, *did* have a 4-inch line bent on to the 6-inch hawser, which helped it considerably. Moreover, it was the very danger that the boat was in on the first two trips that made her crew *refuse to go* on subsequent trips without a surf line. The mere fact that the first two trips were made safely, and without loss of life, constitutes no argument that there was no peril, and the imperative demand for a surf line *after the danger had been realized through actual experience* sufficiently shows the true situation.

The main point on which appellant relies, however, is the alleged negligence of the "Niihau" in lying inactive for over two hours while the "Halcyon" was drifting ashore for the second time. Evidence is referred to to substantiate this charge, but the trouble is that the small portion of the testimony which is cited does not fit the facts. The whole argument is based on Capt. Bruhn's *erroneous* testimony that the first line parted at about 6 a. m., which is fully explained in our brief. Claimant's answer in the case only claims a delay of "more than an hour" (Tr. 187). Lacerdo, an absolutely disinterested witness, testifies that the line parted at about *seven* o'clock (Tr. 251). Paulos, the "Niihau's" chief engineer, says it parted at 6:50 or 7 (Tr. 475), and he was pinned down to this evidence by appellant's

own counsel (Tr. 477, 478). Piersen, appellant's own witness, fixes the time at 6:30 or 7 (Tr. 93). Even Olson does not claim that it was before "about half-past six" and he *says* he looked at his watch (Tr. 124-125). It is perfectly clear that Bruhn was mistaken when he said six o'clock instead of seven o'clock, yet it is entirely on this mistake that appellant's flimsy charge of negligence is built.

Appellant also relies on the evidence of Easton that the "Niihau" changed her position by coming closer to the "Halcyon" at about 7:45, the witness saying: "About quarter to eight she came in closer" (Tr. 438). The evidence, as our brief clearly shows, establishes that the "Niihau" made this move as soon as she could after she *noticed* that the "Halcyon" was dragging, and, as both Carlson and Pilot Mosher placed the time of her appreciable dragging in the vicinity of eight o'clock (Tr. 200, 343-344), and, as Olson's marine protest notes that "at 8 a. m. it was seen that the vessel was drifting ashore fast" (Tr. 492) and notes no previous drifting, it may fairly be assumed that the "Niihau" *did* start to shift her position in the neighborhood of eight o'clock, and Easton's evidence may be approximately correct (although his further evidence that it was an hour or an hour and a quarter thereafter before the "Niihau" sent her boat to the "Halcyon" is obviously *not* correct, for appellant admits that the "Halcyon" hoisted her distress signals at 8:35 a. m., and the boat was either then on its way, as the court impliedly finds (Tr. 496) or was despatched immediately afterwards). Capt. Bruhn thinks that the boat was

despatched at about eight o'clock (Tr. 409), showing again his misconception as to the *times* involved, but harmonizing his evidence in other respects with that of the other witnesses.

We have, then, the following situation pretty clearly established: The towing hawser broke at about 7 a. m., and the "Niihau" changed her position about three-quarters of an hour or an hour thereafter, as soon as the "Halcyon" was in fact found to be appreciably drifting. And about half or three-quarters of an hour later the "Niihau's" boat left for the "Halcyon"—surely a short space of time to allow for the shifting, redropping of the anchors, coiling the rope, getting the boat ready, etc., in spite of appellant's caustic criticism of Capt. Bruhn for the time spent by him in "preparing". Such maneuvers in a storm require time, and it is surprising to us that so little time was taken. The learned judge who decided the case, and who is more familiar with conditions in the Hawaiian Islands than any man now living (having been head of the Provisional Government, President of the Republic and first Governor of the Territory), said that "*such preparations might well have occupied an hour and a half or more*" (Tr. 497).

All of the foregoing argument, however, could well be omitted, and it could also well be admitted that the tow-line broke at 6 a. m. and that the "Niihau" was inactive for two hours, in view of the fact that the "Halcyon" *did not want assistance and did not ask for it*. As repeatedly pointed out in our brief, Capt. Bruhn supposed that his line had been cut by the "Halcyon" and

that he had been dismissed. Under the circumstances he would have been justified in leaving her entirely, but instead and in spite of the other engagements of his vessel he remained in the vicinity. Moreover, Capt. Olson had been offered help by Lacerdo's launch, and had not only refused it, but had denied that he was drifting or needed a line and asserted that he was "all right", all of which appears from our brief. Capt. Bruhn can hardly be blamed for not offering what he had every reason to believe Olson would not accept and what Olson *in fact* would not have accepted. Furthermore, if Olson needed help, *why did he not put up distress signals and ask for it?* This point is absolutely ignored in appellant's brief, yet we think it a most important inquiry. All he had to do to get help was to ask for it, and the fact that he *did not* ask for it could only mean that he did not *want* it, as, *in fact*, he did not (as his conversation with the men in Lacerdo's launch shows). And especially was this the inevitable conclusion for Capt. Bruhn to draw, while feeling that his hawser had been cut loose by the "Haleyon".

In view of the foregoing we resent most strongly appellant's assertion that the "Niihau" purposely allowed the "Haleyon" to get into extreme danger before proceeding to her assistance, in order to enhance the value of its services. Such an assertion is unjust and it finds no hint of support in the record. If we cared to be equally censorious we would say that Capt. Olson *wanted to go ashore* to collect insurance or for some other reason (Tr. 253, 266), but we make no such assertion. We submit that no one can read the record in this

case without coming to the conclusion that Capt. Bruhn was actuated by none but the best of motives in the salvage operations, and to suggest otherwise is, to say the least, ungenerous.

Appellant also claims that the "Niihau" was negligent in allowing her tow-line to part. The cases cited to establish this remarkable contention are in no way in point, for all deal with the breaking or slipping of hawsers without adequate cause therefor, whereas, in the case at bar, the cause of the break was fouling one of the buoys. The line was a *brand new* one (Tr. 71, 308, 338), and there is not a word of evidence in the record to show that it was not a first-class line in every respect. The case is entirely different from that of *The Roberts*, Fed. Case No. 11,914, where the stranded vessel had 1800 tons of stone and iron in her and a 6-inch line was used *after* a 12-inch one had parted. Appellant further suggests, however, that *two* lines should have been used because this was done on the second stranding. This is the converse of appellant's argument that the first boat from the steamer successfully went in without a surf line and, therefore, a surf line was not needed. There was absolutely no reason to believe that the first line would not do the work, and to fasten two lines would have taken considerably more time, as the second salvage operations show. And, as a matter of fact, the first line brought the "Haleyon" out into a place of comparative safety after some *very hard towing*, and it was only *after* it had broken on the buoy that it was considered advisable to use two lines. We think it will be very difficult to predicate a charge of negligence

on any such showing. Finally, it is claimed that it was negligent to allow the line to become foul of any buoys, and that valuable time should have been wasted in carefully fixing their location in order to subsequently avoid them. As shown in our brief, the "Niihau's" hawser was *120 fathoms* long, and there were 65 fathoms, or nearly 400 feet, between the two vessels, and she was towing in the darkness of the night. Under these circumstances, appellant's argument on this point needs no reply. In fact the whole contention as to the hawser is so petty as to suggest the weakness of the whole defense.

Appellant's concluding point is that the award was excessive in any event, and this, in our opinion, presents the only real ground for controversy. If appellant's statements on pages 30 to 34 of the brief were correct, his conclusion would also be correct. The facts, however are not as stated. It is said that the "Halcyon" was originally in *practically no danger*, although she was probably aground and certainly almost aground. It is said that she might have lain in her second position *a week*, although the weight of the evidence is that she would have been wrecked in a few hours, and this is borne out by her utterly unseaworthy condition. It is said that the cargo could have been saved by taking it ashore when the vessel beached or by discharging it into lighters. The court can readily decide what lighters could have done in the prevailing storm, and, while some of the cargo might have gone ashore, we venture the suggestion that lumber washed ashore in scattered quantities, after being immersed for several

hours, would not be a very merchantable article, and that it would hardly pay its owners to salve and haul the same. It is said that the salving vessel was in no danger other than that to which she was subjected *in her regular employment*, and that this was true even of the small boat, a point fully covered in our brief. And, of course, it is also said that the crew of the "Haleyon" were in no danger, although taking them off would have been a most hazardous undertaking, and although Capt. Olson did not dare to go ashore to note his protest until two days later. It is further said that the salvage service occupied only six hours, overlooking the fact that the "Niihau", at Olson's request, remained attached to the "Haleyon" till the morning of January 14th, thus making a service of about twenty-eight hours. Finally, it is suggested that the term of the trial judge was about to expire and that, therefore, he did not give the case careful consideration. We will leave the court to grapple with these weighty contentions as best it can.

Appellant closes his brief with a few carefully selected cases of *very low* salvage awards, and we might remark in passing that authorities can usually be found to either sustain or reverse *any* salvage award, because such cases are legion and depend on varying circumstances. In *The Penobscot*, the services were performed in broad daylight, and only lasted an hour, and the court found that there was no real peril to the salving vessel. In *The Nellie Floyd*, the peril of the salved vessel was not extreme, but we are frank to say that, in our opinion, the amount awarded was far too low. This is also true

of the case of *The Thomas A. Garland*, in which case, also, the value of the salving vessel was about one-fifth of the value of the "Niihau". In *The Ranger*, the services were rendered by a small fishing steamboat, and another vessel also assisted, which did not appear in the case but which presumably would have received a substantial award. In view of these facts the award comes measurably close to the award in the case at bar. *The Hyderabad* is the usual case of towing a disabled vessel at sea, where the awards are naturally less than in cases of stranding. She was not a derelict and the crew simply left her to get other assistance. In *The Thomas L. James*, the salvors were *individuals*, and the court expressly points out that no salving vessel is involved (p. 571). Where salving vessels *are* involved, however, the owners usually get three-fourths of the award because of the use of the vessel, and the individual members of the crew only get *one-fourth*. However, the discussion of salvage awards is generally unprofitable, as each case depends on its own particular circumstances.

We note also that, in most of the cases referred to, misconduct was alleged against the salvors, but in none was the charge sustained. There seems to be something about salvage operations which leads the rescued party to always criticize his rescuer, and in most instances it is probably due to the weakness of human nature. In the case at bar, however, we believe that a clean, disinterested service was rendered and that the record bears this out, making it safe to ignore the citations on pages 22 to 29 of appellant's brief.

We again submit that, having in view the meritorious services rendered and the small value of the salvaged property, the award was just and should be affirmed.

Dated, San Francisco,
October 21, 1916.

S. H. DERBY,
Of Counsel for Appellee.

No. 2830

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

THE AMERICAN SCHOONER "HALCYON," her tackle,
apparel, machinery, boats, furniture, appurte-
nances, cargo and freight money, and
J. A. T. OLSON, master and claimant,

Appellants,

VS.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIM-
ITED, a Hawaiian corporation, owner of the
Steamer "Niihau," for itself, the officers and
crew of said steamer and other servants of
said owner,

Appellee

APPELLANTS' REPLY BRIEF.

NATHAN H. FRANK,

IRVING H. FRANK,

Proctors for Appellants.

DEC 6 - 1916

Filed this.....*day of December, 1916,*

FRANK D. MONCKTON, *Clerk.*

By.....*Deputy Clerk.*

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APPELLANTS' REPLY BRIEF.

In approaching the consideration of this case, we feel that we have a decided advantage over counsel for appellee, because our feelings and enthusiasm have not been wrought upon by participation in the original contest. For this reason, we think that we are better able to distinguish the material from the immaterial elements in the testimony. Respondent's brief is ap-

parently a collation of facts from the record with copious references to pages in the testimony, wherein the testimony is thrown together with apparently very little attempt at analysis, discrimination or sifting as a basis of arriving at a correct conclusion. That many of the witnesses were testifying loosely, with little or no foundation for their statements other than their surmises or predilections, must be admitted. Much exaggeration is apparent upon the face of the record. The stringing together of the strong statements of individual witnesses is of itself of very little value in arriving at the truth.

When everything has been said and done, a careful perusal of the respondent's brief discloses the fact that our opening statement is more than justified, namely: that "in the main the facts are pretty well settled", and that the few facts upon which we lay stress in our opening brief, are the determining facts in this case. For instance, when we consider the position of the "Halcyon" from which she was rescued in the initial towage, we suggested (solely as the result of our own examination of the record and without having seen respondent's brief, or otherwise having been advised of the position that would be taken by them) that

"Perhaps the most reliable testimony upon this subject (namely, the then position of the Halcyon) outside of that of the master of the Halcyon, is that of Morton, the purser of the Niihau, because he was passing the Halcyon and also the Ka Moi on his way to the Niihau, and observed both vessels."

We then call attention to the final conclusion of that witness upon the subject, and in a word point out how he agrees with the master of the "Halcyon" in regard thereto. We have not dilated upon this subject because we considered the testimony of these two witnesses conclusive.

We now find that the appellee, after his excerpts and numerous citation of pages of testimony of other witnesses upon the subject, is compelled to come to a like conclusion with respect to the effect of the testimony of the purser, Morton, although he attempts to give it a somewhat different effect. He says (p. 16):

"The purser in a small boat had a considerable better opportunity to judge the proximate distance the schooner was from the piles, as he had just traversed that distance to talk to her, and we submit that his judgment upon it is more reliable than that of one on board the schooner who had *not* traversed that distance."

Of course, if the purser's opinion, for the reasons above indicated, is to be accepted in preference to those *on board* of the schooner, it certainly and for a much better reason, is to be accepted in preference to any other witness *not* on board the schooner.

Such being the case, the fact that his final testimony upon the subject practically agrees with the estimate of Captain Olson regarding the position of the schooner, ought to render it unnecessary to enter upon a discussion of the haphazard testimony of other witnesses less favorably situated than those two, even though some of the other witnesses were on board of

the schooner. We say this because the master of the schooner, being charged with the responsibility of command, would probably be in better position to observe the conditions than the members even of his own crew.

We have also in this connection, which relates solely to the question of the danger to the "Halcyon" in her first position, the fact of the soundings made by the "Niihau's" boats crew, and the comparison of those soundings with the soundings indicated upon the maps introduced in evidence. These soundings indicated that with 3 fathoms of water at her bow, her bow must have been at least as far off shore as the point indicated by the 17 ft. soundings on Libellant's Exhibit 1, which, with the vessel 130 feet long (Rec. p. 166), would place her stern at a point midway on a line drawn between soundings 15 and 16 on that map. Now, measuring from "Halcyon #1", where the vessel lay alongside of the wharf as indicated on that map, to sounding 17, we have a distance of about 520 feet drift from her original position, which is the most that respondent claims she had drifted up to that time. He refers to the testimony of Joseph, who said she had drifted "from that wharf probably six hundred feet." (Br. p. 12.) He attempts to add two hundred feet to that for a subsequent drift, but that is not justified by the evidence. Taking Piersen's statement, upon which respondent relies for this two hundred feet, at its face value, but of which there is no corroboration, it is not only a haphazard suggestion—"Oh, probably a couple of hundred feet"—

but it is distinctly not a movement towards the shore or toward the piles, but a *side* drift from the wharf, viz.: “She ran *over the side toward them boilers.*” (Rec. p. 92.) We are not unmindful of respondent’s suggestion (Br. pp. 20-21) that the use of the word “boilers” in this connection is a stenographer’s mistake, and should have been “piles”, but we cannot accept the suggestion, because the context disproves it. The witness first says “she *didn’t drag in toward the beach*”, (p. 92) and follows it with “she ran *over the side* towards them boilers”. The Court will recall that the “boilers” is the place where she went ashore the *second* time, and is a long way to the eastward of the piles. (Map, Lbts. Ex. No. 1.)

In passing, we call attention to this method of respondent’s statements of fact as evidence of their unreliability. In all his calculation of that drift, respondent treats it as a drift in direct line parallel with the wharf, whereas all the testimony is to the effect that she drifted *out from* the wharf—that she had been made fast to a buoy, and when her wharf lines parted and her stern line let go, she swung out. In fact if she had not swung out at least the distance we have indicated, instead of drifting shoreward that distance, respondent’s main contention that she was close to the piles must fail, for without it she could never have arrived at any of the points for which he contends. By consulting the map it will be seen that the piles are somewhat further to the westward of the line of the wharf *than even the point indicated by the 17 ft. soundings.*

This off-shore drift would also be the natural result of the direction of the wind, which respondent claims to have been "a little east of north, and the sea was running in the same direction." (Br. p. 13.) The wharf lies on a line running *17 deg. west* of north, and as the wind and sea were "a little *east* of north", they were across the wharf. This fact accords with the testimony of Captain Bruhn, the master of the "Niihau", that at the point where the "Halcyon" then lay, neither the wind nor the sea was as strong as it was at the outer end of the wharf. (Bruhn, p. 415.)

The calculations attempted by the respondent based upon a measurement of the anchor chains of the "Niihau", and the length of the "Niihau", and the length of the hawser from the "Niihau" to the "Halcyon", and the length of the "Halcyon", is based upon too many elements of uncertainty to be of any real value, viz.: the place where the "Niihau's" anchors were dropped, the amount of the chain let out, the amount of slack on the chains, the amount of hawser let out, and similar matters, all of which are testified to only in language of approximation. Who, with a due regard for accuracy of statement, would undertake to say within a couple of hundred feet, where, on a dark night, the steamer's anchors were dropped? And yet, two hundred feet at the shore end is of vast importance in this case.

It is also to be noticed, that respondent allows but 10 feet slack in 90 fathoms of chain, which indicates no appreciation of the weight of chain, and is practically no allowance at all for slack. Then the length of

hawser between the vessels, which he indicates with the suggestion "say another 390 feet", which would give him the 65 fathoms straight as a string. The witness uses the expression, respecting the length of hawser, that it was "about 60 or 65 fathoms", and counsel uses the extreme for his calculation, without allowance for its sag, which we all know shortens the line very materially. All this indicates the extreme views which respondent finds it necessary to adopt in order to make out his case.

Again, in order to indicate that the vessel must have been ashore, he suggests that it took the "Niihau" from 2 to 2½ hours to tow the vessel from that point to the point where her tow line parted, a distance of "some 600 to 800 feet." (Br. p. 26.) This is based upon the testimony of the engineer of the "Niihau" that the vessel began pulling on a taut hawser at 4:30 A. M., and that the towing continued "with his engines at full speed until *about* 6:50 or 7 o'clock the line parted". But this scarcely accords with the testimony of the other witness to whom respondent refers, namely, the witness Joseph, that the steamer heaved on the tow line for probably *an hour* before she started towing.

This testimony of 2 to 2½ hours, is the basis upon which respondents attempt to fix on 7 o'clock as the time the hawser parted, to which subject we shall now address ourselves.

It is very significant that

RESPONDENTS' ENTIRE DEFENSE RESTS UPON THEIR ATTEMPT TO DISCREDIT THE TESTIMONY OF THEIR OWN MASTER, THE MAN IN COMMAND OF THE "NIIHAU", AND UPON WHOM RESTED ALL THE RESPONSIBILITY OF THE SERVICE.

Note the following (Br. p. 36):

"Bruhn fell short as a witness merely that he was unable to judge the lapse of time, in which connection we submit that his estimates of time were wrong, rather than that he lay idle for a long time, as appellee claims."

Again:

"Bruhn's inability to account for the passage of *two* hours, instead of one hour, from the time that the line parted until she went ashore (see Tr. 393-410) shows conclusively, when we note all the other testimony, that Bruhn was simply confused in his own mind about the matter of *time*, both *as to the clock* and the lapse of time, but that he doggedly stuck to his original estimates, perhaps because he had once given them, *although it should early have appeared to him that his inability to account for the balance of the 'two hours' was because he was wrong somewhere.*" (Br. p. 37.)

So, also, in the addendum to the brief, referring to our argument, it is said (p. ii):

"The whole argument is based on Captain Bruhn's *erroneous* testimony that the first line parted at 6 A. M., which is fully explained in our brief."

Again (p. iii):

"It is perfectly clear that Bruhn was mistaken when he said six o'clock instead of seven o'clock, yet it is entirely on his mistake that appellant's flimsy charge of negligence is built."

As suggested in our opening brief, Captain Bruhn testified that the tow line parted at about 6 o'clock in the morning. We think there is little to be gained by reference, as in respondent's brief, to a single sentence or expression of any witness,—the entire testimony upon any given subject, should be considered; no part is of any value except in its relation to the context. We have, therefore, upon this subject, *referred the Court to pages 394-409 of the record*, meaning thereby to refer to the entire testimony of Captain Bruhn upon this subject, and we are not justly chargeable with relying upon "a small portion of the testimony which is cited" (Addendum, p. ii) simply because we do not reprint it in the brief.

For the satisfaction of respondent, let us now refer to it more at length. Captain Bruhn fixes the time when the tow line parted at "somewhere around six and a little after six." (p. 393.) He is then very carefully examined with relation to his actions between that time and the time he passed the line for the second tow, and is finally asked the question:

"Q. Now, it was somewhere in the neighborhood of about two hours from the time that the tow line parted until the 'Halcyon' reached the beach. How do you account for the balance of that time?" (p. 400.)

It will be observed that the witness makes no suggestion that there is any error in the statement that this interim was as long as two hours, but he answers:

"Well, the 'Halcyon' was dragging in slowly; she was dragging during that time.

Q. Yes, but what were *you* doing?

A. We was, I explained that before; *I was watching her.*”

Again, he is asked:

“Q. Now, Captain, I am not quite clear. You sent the ‘Halcyon’ a line from N, your position at N 2 between eight and half past eight? Is that right?

A. Thereabouts.

Q. You say the tow line parted between six and half past six?

A. The tow line parted a little after six.

Q. So that two hours elapsed from the time the tow line parted until she, until you sent her a line from N 2?

A. She was lying to an anchor there; there was no necessity of sending a line until she commenced to drag.

Q. Then she was lying at anchor at what place?

A. She had put her anchor down.

Q. Wasn’t she dragging at that time?

A. Not right off.

Q. How long a time did she remain without dragging?

A. I said that before; in the neighborhood of 15 minutes before I noticed particularly that she was dragging.” (pp. 400-401.)

Again:

“Q. Now, Captain, here is what I am trying to make clear to the Court, and that is, what you were doing during the time that intervened from the time that she began dragging or that the tow line parted, until she went on the beach, as near as she ever got?

A. The ‘Niuhau’ was lying to anchor.

Q. No, two hours elapsed, is not that so, Captain, from the time that her tow-line parted until she went on the beach; we will assume that she went on the beach. Two hours elapsed?

A. I don't think it was quite two hours.

Q. Well, anyway, you said that you sent her a line from your vessel at N-2, between eight and a half past eight.

A. Somewhere in that neighborhood.

Q. You say that the tow-line parted little after six?

A. Little after, yes, sir.

Q. That makes at least 2 hours, does it not?

A. Yes." (p. 401.)

Again, at page 402:

"Q. You said it took, in substance, you said it took 2 hours to go from the time that the tow line parted until you sent a line to the 'Haleyon'.

A. While she was in a safe condition.

Q. Yes, but that was only about 15 or 20 minutes that she was in a safe position.

A. That is a long distance; she's a long ways from the beach here.

Q. What were you doing at that time?

A. I was lying to an anchor and watching the 'Haleyon'. They were moving over here; when she was going in we followed her up." (p. 402.)

Finally the Court takes a hand in the examination, and says (pp. 404-406):

"The COURT. Counsel wants to find out in this hour and three quarters from the time the line parted and the 'Haleyon' dragged anchor up to the time she drifted on to the beach, as I understand, is between an hour and three quarters and two hours. He wants to know how you occupied that hour and three quarters; he wants you to cover the whole of that hour and three quarters and tell him what you were doing.

Mr. RUSSELL. May I remind the Court the time is longer—from six or half past six to half past eight.

Mr. WARREN. May I also remind the Court and counsel that the witness is taking into consideration the time he not merely sent the line, but got it aboard and got it taut up to the time they began heaving.

The COURT. Let's get that straight from the witness. He wants to make you account for this time; *he wants to show that you stood still for a while, and it's very important that you should know what you are talking about*; whether you are taking from the time of the 'Halcyon' dragging her anchor and the line parted, up to the time she had drifted ashore and stopped; or whether these two hours covered when her line parted up to the time you got the line aboard.

A. In this position here, your Honor, we was working on the 'Halcyon' all the time.

Mr. WARREN. N—2?

A. That's where we were working. After we had the first line, in my opinion, the vessel wasn't quite ashore then. She was coming in here. She commenced to go broadside, which I explained before, when she got in here near the beach, the suction under her stern and also the back action from the beach.

The COURT. Then the two hours, was that the time, two hours to the time you got your line aboard?

A. That's included; all those times there, from the time we anchored here, the time we was working on the 'Halcyon'; got the line over to the 'Halcyon', hove on this line; and the boats had to come back and get that second line and make that fast.

Q. That two hours, was that the time that you got the line aboard, the first line? There were two lines after her line parted and she dragged anchor?

A. Yes; it was taken up here a little after six, which I say; and up to the time that she drifted up on the beach, we was maneuvering the ship.

Q. What time did she drift on the beach?

A. On the beach there, that was after eight. She never got exactly on the beach.

Q. *That was two hours, then, from the time the line parted up to the time she grounded?*

A. *About that."*

Again (p. 409):

"Mr. RUSSELL. Captain, you say that the tow line parted a little after six; now, how much after six, to the best of your recollection?

* * * * *

A. It might have been between six somewhere around quarter past six; might have been a little after or a little before. I know it was after six.

* * * * *

Q. Now, to your best recollection, Captain what time was it when you sent the boat's crew with a line, the six-inch line to the 'Halcyon'? What time was it at that time?

* * * * *

A. The time that we commenced?

Q. No; what time was it after that period, at that point?

A. It was around eight o'clock; a little after.

Q. You say a quarter after?

A. I didn't have time to look at the watch then because my mind was occupied.

Q. Would you say it might have been a quarter after eight?

A. I couldn't give the exact time, but it was in the neighborhood around eight o'clock; little before or little after."

We do not have to concern ourselves with the Captain's uncertainty about this time, because it is definitely fixed by Mr. Nichols from a memorandum made at the time. There is no claim that the lines were made fast to the "Halcyon" before she broke out her signals of

distress. The most that libelants claim is that the small boat was then on the way to the "Halcyon", which is testified to by Mr. Nichols. But the time when the signals broke out was 8:35, and he adds, that the small boat departed for the "Halcyon" about five or ten minutes after the signals went up.

Can there have been any room for this witness to have been mistaken after such a careful examination both by counsel and the Court definitely and repeatedly pointing out to him the purpose of the interrogatory, calling his attention again and again to the fact that at least two hours is the time, according to his testimony, between the parting of the hawser and the start to render assistance on this accosion? Over and over again, the master testifies the time of the parting of the hawser at six or a little after, at no time suggesting it exceeded a quarter past six. Repeatedly the witness testified that he was lying at anchor, watching her drift, and *attempts to fill up the interval with suggestions of maneuvering, of preparation*, which finally simmer themselves down to twenty or twenty-five minutes, and the definite fixing of the completion of these maneuvers and the departure of the small boat for the "Halcyon" at 8:35.

Respondent's comment upon this testimony is that

"Bruhn was simply^{*} confused in his own mind about the matter of time, both as to the clock, and the lapse of time, but doggedly stuck to his original estimates, perhaps because he had once given them, although *it should early have appeared to him* that his inability to account for the balance of his two hours was because he was wrong somewhere. He

said he ‘never marked the minutes down.’ (Tr. 393.)” (Br. p. 37.)

This reference to his remark that he “never marked the minutes down”, does not meet the issue. It was said simply in connection with, and refers to the time it took him “to steam down there and re-drop the anchors; that didn’t take long”. (Rec. p. 398.) It does not pretend to qualify the testimony that two hours elapsed between the parting of the hawser and the putting out of the small boat to the “Haleyon”.

We are fully in accord with respondent’s suggestion that

“it should early have appeared to him (Bruhn) that his inability to account for the balance of the two hours was because he was wrong somewhere”.

Indeed, under the frank and direct interrogatories of cross-examining counsel, and under the careful instruction of the Court, as well as the prompting and suggestions of his own counsel the witness could not have failed to understand the full purpose of the examination. But the suggestion that he was unable to account for the time “because he was wrong somewhere”, begs the entire question. There was one of but two clean-cut issues to be met, viz.: Did the line part at six or a little after, or was he guilty of negligence, or something worse in not proceeding sooner to the rescue? How can it be claimed that “he was simply confused in his own mind about the matter of time”, when the matter of time was so clearly and carefully presented to him? And mark you, also, counsel refers to the witness as having the clock time in mind—“both as to the clock, and the

lapse of time". Note also, as pointed out in our original brief, when the question of the length of this time was first brought to his attention, he attempts to fill up the time by "preparations" to render the service:

"Q. What were you doing in the meantime from the time that you saw her dragging until she got on the beach, until she got as close to the beach as she ever got; that's an hour and three quarters?

A. We was preparing." (Tr. 396.)

Here counsel for respondent attempts to come to the rescue, as it will be noted he does throughout this trying period of the examination. But as the cross-examination proceeds, it develops that this excuse of "preparing" would not answer the purpose, and it is quite as just a conclusion from the entire testimony that the *witness's consciousness of guilt* with respect to the delay and his failure to cover it with the excuse of time occupied "in preparing", was the "wrong somewhere" which "early appeared to him as the reason for his inability to account for the balance of the two hours", as that the fact that the line parted at seven, instead of six o'clock was the "wrong somewhere".

But we have other testimony which supports the claim that the line parted close to six o'clock more reliable than any of the testimony upon which respondent relies to discredit his chief witness:

Paulos, upon whom respondent mainly relied upon to fix the time of the parting of the hawser at seven o'clock (speaking of the initial service), says that

"The 'Niihau' began to pull on the taut towing hawser at 4:30 A. M., and that the towing continued

with his engines at full speed until 'About six-fifty or seven o'clock the line parted'." (Br. p. 26.)

This testimony is relied upon to prove that the vessel was hard aground in the initial tow, and that it took them "from two to two and a half hours" to tow her "some six or eight hundred feet in distance".

Whatever the situation of the "Halcyon" with respect to being aground at the time of the first service, it is certain that she was not worse aground than she was in her second position. In the first position, she was supported by two anchors and a line to the buoy, and was, so far as the sea is concerned, protected by the wharf. There is no question about this from the testimony. In her second position, she was more exposed to the wind and sea, and (if we are to accept the contention of the respondent), had broached to on the beach and among the breakers. *Yet, in this last position, the time is definitely fixed at both ends of the service.* The small boat left the "Niihau" for the "Halcyon" at 8:35. She must have made two trips, because upon this occasion two separate hawsers were passed between the vessels. Thereafter she was carefully straightened up, drawn off the beach and towed out into the harbor much further than on the first occasion, which tow was completed at 10:15. (p. 440.)

Now, upon the occasion of the first tow, observe that the time to which Paulos testifies is reckoned, *not from the time they began to pass the hawser, but from the time the "Niihau" began to pull on the taut towing hawser*". (Br. p. 26.) On the second tow, however, the

time is fixed at the time the "Niihau" first *sent out a small boat to pass the first hawser*. Yet the *entire time occupied in passing two hawsers, straightening the vessel up, taking her off the beach, and taking her out to her safe anchorage where she could drop her anchor, is one hour and forty minutes*. To say nothing of the elements of credibility affecting Paulos' testimony, which are apparent in the record, this positive testimony as to the time it required to perform a greater service, renders it certain that Paulos' estimate of time required to render the lesser one, is at fault. *Assuming that the latter service took at least as long as the former, we have an hour and forty minutes, from 4:30 o'clock, which fixes the time of the parting of the hawser at 6:10—precisely the time testified to by Captain Bruhn.*

Moreover, we have the positive and uncriticised testimony of Mosher, called for the libelant, that he first took notice of the vessel at *about seven o'clock*; when he observed her *she was dragging her anchor slowly*. (Tr. 344.) The line must have parted some time before that, because, according to the contention of the libelant they did not notice her drag *until fifteen or twenty minutes after the line parted*. How long she had been dragging before Mosher observed it, however, does not appear. Mosher, however, testifies that he saw the signals of distress go up somewhere about 8:35. (p. 345.) That is also nearly two hours. What was Bruhn doing in the meantime?

Thompson, the second mate of the "Niihau" says that in the morning about 4 o'clock the purser's crew reported the "Haleyon" ashore. (p. 307.) That the

six-inch line parted "it must have been between six and seven in the morning". (pp. 312-13); that they had then been towing "*probably over an hour*". (p. 313.)

Morton, the purser, testifies:

"Q. How long did it take you after you were told after you were asked to take a line to the 'Halcyon' before the 'Halcyon', *before you started towing her out?*

A. I should say about three-quarters of an hour, half an hour, or thereabouts."

An hour and three-quarters from 4 o'clock is a quarter to 6.

We might extend these references by quoting from Nichols and Easton, whose testimony is accurate and unqualified regarding the inaction of the "Niihau" but it scarcely seems necessary to spend so much time upon this question. The line having been passed to the "Halcyon" in her second position at 8:35, of which there is no dispute, there appears under the very best assumption on the part of respondent, to have been an hour to an hour and a half before there was any attempt to go to the rescue—this allows for 20 to 25 minutes claimed by Bruhn "for preparing", while under our contention it was fully two hours or more. In either event, there was gross negligence.

We might very well conclude this subject by adopting the appellant's own statement, which assumes that

the hawser parted at seven o'clock, instead of six o'clock. He says (Addendum, iv):

"We have, then, the following situation pretty clearly established: The towing hawser broke at about 7 a. m., and the 'Niihau' changed her position *about three quarters of an hour or an hour thereafter*, as soon as the 'Haleyon' was in fact found to be appreciably drifting."

We pause here for a moment to point out that, according to Captain Bruhn, "The 'Haleyon' was in fact found to be appreciably drifting" in fifteen minutes after the hawser parted; so we have here, in counsel's own statement, about three-quarters of an hour of inaction. Continuing, he says:

"And about *half or three quarters of an hour* later the 'Niihau's' boat left for the 'Haleyon'."

Thus on his own statement, taking his assumption in its most favorable light to ourselves, it was *an hour and three-quarters* from the time of the parting of the hawser until the "Niihau's" boat left for the "Haleyon". Respondent's comment upon this is interesting. He says:

"Surely a short space of time to allow for the shifting, redropping of the anchors, coiling the rope, getting the boat ready, etc., in spite of appellant's caustic criticism of Capt. Bruhn for the time spent by him in 'preparing.' Such maneuvers in a storm require time, and it is surprising to us that so little time was taken. The learned Judge who decided the case, and who is more familiar with conditions in the Hawaiian Islands than any man now living (having been head of the Provisional Government, President of the Republic and First Governor of the Territory), said that 'such

preparations might well have occupied an hour and a half or more'."

This is a direct admission that there was "an hour and a half *or more*" between the parting of the hawser, and the departure of the small boat. But the testimony is conclusive that the time required for "the shifting, redropping of the anchors, coiling the rope, getting the boat ready, etc." did not exceed twenty-five minutes, which leaves an hour and twenty minutes, according to respondent's own figures, unaccounted for. Thus the nautical skill of counsel, as well as that of the learned Judge who decided the case (whose judgment in this respect respondent seems to think is fortified by the fact that he had "been head of the Provisional Government, President of the Republic and first Governor of the Territory—all undoubtedly positions which contribute to nautical experience inasmuch as he was steering the "ship of state") are both found at fault.

Another excuse is sought in the suggestion that when the tow line parted, Capt. Bruhn

"saw the captain of the schooner (or a man on the quarter deck whom he took to be the captain) making a waiving motion with his arms which he read as meaning that the tow was sufficient from the schooner's point of view. (Tr. p. 341.) From this he assumed that his line had been cut on board the schooner, a circumstance which made him try to yell across in the storm to demand why. Seeing the schooner then drop anchor he not unnaturally assumed the schooner's captain was satisfied to

stop there,—in other words he was dismissed.”
(Br. p. 28.)

Let us consult the testimony a moment and see whether this suggestion is justified. Captain Bruhn testifies (Rec. p. 341):

“Q. Were you observing the ‘Halcyon’ at the time the line parted, and did you see anyone on board make any signals?

A. No.

Q. Do you know where the Captain was, on the ‘Halcyon’?

A. No.

Q. Or anybody that you took to be the Captain?

A. Nobody on the fo’c’s’le excepting this man that threw his arms out.

Q. When did he do that?

A. Just about when the line parted.

Q. How did he throw his arms out?

A. Throw them out like that. (Indicating by raising arms parallel to the floor then dropping them down.)

Q. Was that a kind of a signal, a customary signal? What would you take that signal to mean?

A. That is generally used as a signal.

Q. What’s that signal for?

A. Maybe, in case we have anything, for us to let go; *otherwise to let go an anchor or anything like that; used for both purposes.*

Q. Where was that man standing on the ‘Halcyon’?

A. On the fo’c’s’le-head, sir.

Q. Did you make any signals in reply?

* * * * *

A. No.

Q. What did the ‘Halcyon’ do immediately upon the line being parted or let go?

A. *Dropped her anchor.*

* * * * *

Q. Did you pay any attention to the 'Halycon' after that?

A. Yes. Standing and looking at her.

Q. What did you observe?

A. Well, after a while I saw her dragging in shore.

Q. How long after the line had parted and she dragged anchor was it that you saw her dragging?

A. About fifteen or twenty minutes.

Q. Could you determine then whether she was dragging, or just what she was doing?

A. Yes; I noticed that she was dragging absolutely then and we started to get our line ready again to run to her" (pp. 341-42-43).

Does that look as though the captain had accepted the raising of the arms as a signal of dismissal? And if he did so accept it, did he not conclude differently within 15 minutes? He interprets the meaning of the signal, among other things, "to let go an anchor or anything like that", and the "Halycon" did let go her anchor. Unquestionably that is what the signal was intended for. Neither does Captain Bruhn suggest that he accepted the situation as a dismissal. He says he stood by, looking at her for 15 or 20 minutes; noticed she was dragging absolutely, and says he started to get his line ready again to run to her.

Attempt is made to palliate the action of Captain Bruhn by charging Captain Olson with failure to accept the services of the launches offered at the time of the

parting of the hawser, and suggests that it is "a case of the 'pot calling the kettle black', when Olson now cries that he was neglected and allowed to go ashore helpless and unaided." (Br. p. 33.)

Assuming that the "pot" was "black", it does not appear to us to be any excuse for the "kettle", which was itself charged with a definite duty. It had assumed a service and responsibility which it was bound to perform, and if by reason of negligence, incapacity, or want of good seamanship on the part of the master of *the distressed schooner*, *her danger was thereby increased*, the responsibility lay upon the salvor to that extent for *increased diligence and activity*. The danger to the schooner may have been increased by a lack of good seamanship on the part of her own master. If so, it was, in addition to the storm, an additional element of danger placing additional responsibility upon the salvor.

But we do not find any evidence which justifies the criticism of Captain Olson indulged in. He was at the time in a critical position, and had his hands full. As already suggested in our opening brief, he had originally drifted when in a more protected position with better hold than he had at the time the hawser parted. When the hawser parted he was called upon to act in an emergency; he was busy dropping his anchor, and attempting to save his vessel from a critical position off the shore. He knew he was in charge of the steamer, to whom he naturally looked for protection, and could not afford to be distracted or bothered with the importunities of the small launches, which he

knew could not render him efficient service—certainly not the kind of services that the steamer could render which had him in charge and lay but a hawser's length away. In this situation, being both busy and distressed, he would naturally look to the steamer for succor, and would naturally dismiss the lesser and inefficient help, threatening him with additional salvage claims. It may be that he was in error in not excepting the services of the launches to run a line, but if so, it was an error of judgment in an extremity, which could in nowise excuse the vessel which had him in charge, and which latter vessel, so far as the record shows, knew nothing of either the offer or availability of other aid.

But it is said that he “did not want assistance, and did not ask for it”. The suggestion that he “did not want assistance”, is gratuitous. He did not want such assistance as the launches proposed, but there is no ground for the suggestion that he did not want assistance from the steamer. To support this latter suggestion, reliance is placed upon the supposed “signal of dismissal”. But there is no evidence that there was any “signal of dismissal”, so far as Captain Olson is concerned, and we have already shown that there was no warrant for Captain Bruhn's assumption that the signal, which he alone testifies to having seen, was intended as a signal of dismissal, or was construed by Captain Bruhn to be such signal. Captain Bruhn knew that he had not completed the service as he had originally intended—that he had not taken her to what he deemed a safe anchorage, and when he lost the vessel,

it was not for him to wait for another signal of distress before completing what he had undertaken.

To conclude, we desire only to suggest, that as respondent's entire defense rests upon an attempt to discredit their own principal witness, and since, if they do succeed in fixing the time of the parting of the hawser somewhat later than six, or a little after, they are still compelled to account for two hours, or thereabouts, of inaction; and further, since they can find no better answer therefor than the suggestion that "the pot is calling the kettle black", and an appeal to the conclusion of the District Court which is very much in the nature of an appeal to the statement of the Court as the testimony of an expert upon the subject, we do not feel that they have made very much advance in the argument, particularly as the most reliable other testimony in the case supports our contention.

In closing, we note a very peculiar appeal to the Court as a reason why it should not disturb this award. After making their claim for the service as one of "high merit", they conclude:

"If, however, the present award be substantially reduced, and the appellee be compelled to pay the costs in this court, it is very apparent that there will be *practically nothing* left to it to reward it for said achievement."

No comment is necessary in reply to such an appeal. If, as a matter of justice, the award should be either

reduced, or denied in its entirety, there can be no justice in throwing the costs upon the appellant, who, without such appeal is entirely left without redress, and, if the costs be saddled upon him would to that extent be denied redress.

We respectfully submit that the libel should be dismissed, and appellant allowed its costs in both Courts.

Dated, San Francisco,

December 4, 1916.

NATHAN H. FRANK,

IRVING H. FRANK,

Proctors for Appellants.

